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Substantively Consolidated SIPA Liquidation  
of Bernard L. Madoff Investment Securities LLC  
and the Chapter 7 Estate of Bernard L. Madoff*

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION  
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT  
SECURITIES LLC,

Defendant.

Adv. Pro. No. 08-01789 (SMB)

SIPA LIQUIDATION

(Substantively Consolidated)

In re:

BERNARD L. MADOFF,

Debtor.

IRVING H. PICARD, Trustee for the Liquidation of  
Bernard L. Madoff Investment Securities LLC,

Plaintiff,

v.

CERTAIN DEFENDANTS REPRESENTED BY  
CHAITMAN LLP ,

Defendants-Appellants.

Adv. Pro. CERTAIN DEFENDANTS  
REPRESENTED BY CHAITMAN  
LLP

**TRUSTEE'S SUPPLEMENTAL APPENDIX**

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of Bernard L. Madoff Investment Securities LLC  
and the Estate of Bernard L. Madoff*

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

SECURITIES INVESTOR PROTECTION  
CORPORATION,

Plaintiff,

v.

BERNARD L. MADOFF INVESTMENT  
SECURITIES LLC,

Defendant.

Adv. Pro. No. 08-01789 (SMB)

SIPA Liquidation

(Substantively Consolidated)

In re:

BERNARD L. MADOFF,

Debtor.

IRVING H. PICARD, Trustee for the Liquidation of  
Bernard L. Madoff Investment Securities LLC,

Plaintiff,

v.

TRUST U/ART FOURTH O/W/O ISRAEL  
WILENITZ, EVELYN BEREZIN WILENITZ,  
individually, and as Trustee and Beneficiary of the  
Trust U/ART Fourth O/W/O Israel Wilenitz, and

Adv. Pro. No. 10-04995 (SMB)



SARA SEIMS, as Trustee of the Trust U/ART Fourth  
O/W/O Israel Wilenitz,

Defendants.

### **PLAINTIFF'S INITIAL DISCLOSURES**

Pursuant to Rule 26(a)(1) of the Federal Rules of Civil Procedure as made applicable to this adversary proceeding by Rule 7026 of the Federal Rules of Bankruptcy Procedure, Irving H. Picard, (the "Trustee"), as trustee for the substantively consolidated liquidation of Bernard L. Madoff Investment Securities LLC ("BLMIS"), pursuant to the Securities Investor Protection Act, 15 U.S.C. §§ 78aaa, *et seq.* ("SIPA"), and the Estate of Bernard L. Madoff, by and through his counsel Baker & Hostetler LLP, hereby provides the following initial disclosures.

- A. Rule 26(a)(1)(A)(i). The name and, if known, the address and telephone number of each individual likely to have discoverable information—along with the subjects of that information—that the disclosing party may use to support its claims or defenses, unless the use would be solely for impeachment.

Upon information and belief, the Trustee discloses the following individuals, or where deceased, the estates of the individuals, that he may use to support his claims. Current or last known addresses, where in the possession of the Trustee, are provided below. The Trustee reserves his right to supplement this list as other individuals and/or entities become known, and/or as different subjects become relevant.

At the present time, the Trustee identifies the following individuals and entities that he may use to support his claims:

1. Trust U/ART Fourth O/W/O Israel Wilenitz ("Trust"), Evelyn Berezin Wilenitz, individually and as Trustee of the Trust, and Sara Seims, as Trustee of the Trust. Defendants may be contacted through counsel Helen Davis Chaitman, CHAITMAN LLP, 465 Park Avenue, New York, NY 10022, Tel.: (888) 759-1114, Email: hchaitman@chaitmanllp.com.

2. The following individuals have knowledge concerning (i) the preservation of BLMIS's books and records: Paul Takla, Federal Bureau of Investigation, 26 Federal Plaza, 23rd Floor, New York, NY 10278, and (ii) the identification, preservation, and collection of BLMIS's books and records: Matthew Cohen and Meaghan Schmidt, AlixPartners LLP, 9 West 57th Street, Suite 3420, New York, NY 10019.
  3. The following individuals may be relied on by the Trustee as examples of creditors and customers with matured or unmatured unsecured claims against BLMIS that are allowable under § 502 of the Bankruptcy Code or that are not allowable only under § 502(e) of the Bankruptcy Code:
    - Paul A. Goldberg & Caren Goldberg;
    - Marsha Moskowitz;
    - S. Joel Pelzner & Carol A. Pelzner.
  4. BLMIS executives or employees:
    - Belle Jones – The Trustee does not expect to rely on former BLMIS executives or employees at trial.
    - Jodi Crupi – The Trustee does not expect to rely on former BLMIS executives or employees at trial.
    - Robert Cardile – The Trustee does not expect to rely on former BLMIS executives or employees at trial.
    - Erin Reardon – The Trustee does not expect to rely on former BLMIS executives or employees at trial.
    - Frank DiPascali – Deceased.
- B. Rule 26(a)(1)(A)(ii). A copy—or a description by category and location—of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses, unless the use would be solely for impeachment.

As a result of Judge Stanton's order dated December 15, 2008, the Trustee has assumed possession of approximately 13,500 boxes of BLMIS paper documents and 19,250 media sources containing electronically stored information ("ESI"), which include, but are not limited to, desktop computers, laptop computers, AS/400 computers, hard drives, network storage, microfilm, microfiche, backup tapes, PDAs, floppy disks, compact discs and memory cards. The

Trustee has preserved all of the data of which he assumed possession. With respect to these materials, some paper and some ESI have been loaded for potential production in the Trustee's cases in one or more electronic databases, totaling 4.0 terabytes or 28.8 million documents. Materials not contained on the databases are stored in Long Island City, New York or Rosendale, New York.

The Trustee is also in possession of over 5 million documents received from approximately 450 parties during the course of this action, including during the investigation and litigation of adversary proceedings. Additional documents are produced to the Trustee on a continual basis. The Trustee's use of these documents is subject to a variety of restrictions including the Protective Order entered on June 6, 2011 in the matter of *Securities Investor Protection Corporation v. Bernard L. Madoff Investment Securities LLC*, et al., Adv. Pro. No. 08-01789 (SMB) (the "Litigation Protective Order") or confidentiality agreements. Some of these documents were produced to the Trustee for settlement purposes only. Additionally, the Trustee has obtained, and may obtain in the future, the ability to access documents, information, and testimony related to legal proceedings outside of the United States, to which the Trustee is a party or has an interest in the outcome of the litigation, that are subject to confidentiality restrictions imposed by courts or rules of procedure in the relevant jurisdictions.

Because the investigation of BLMIS's books and records continues, the Trustee may learn that additional documents, ESI, and/or tangible things support the Trustee's claims. Any omissions are inadvertent. Consequently, the Trustee reserves his right to supplement this list and the production of materials as other documents become known and/or as different subjects become relevant.

At the present time, the Trustee identifies the following documents, ESI, or tangible things in the possession of Plaintiff's counsel that contain information relevant to the matter in controversy.

1. Customer account documents: The Trustee will provide a set of account documents related to Defendant's investments with BLMIS, including account opening documents, correspondence, account statements, and documents related to deposits to and withdrawals from Defendant's BLMIS account, particularly as reflected on Exhibit B to the Complaint. These account documents have been provided with these Initial Disclosures.
2. Documents sufficient to prove that BLMIS was operating a fraudulent scheme going back to at least the 1970s.
3. Documents sufficient to prove that BLMIS was insolvent from the period of September 12, 2008 through December 11, 2008, the 90-day preference period, and also from the period of December 11, 2006 through December 11, 2008, the 2-year fraudulent transfer period.
4. Due to the voluminous nature of the documents relating to the individuals identified in Section A, Paragraph 3 of these Initial Disclosures, counsel for the Trustee will produce these documents upon request.

Consistent with applicable court orders, the Trustee intends to make available a set of approximately 4 million documents in a virtual data room ("E-Data Room 1") to prove that BLMIS was a fraudulent enterprise and that BLMIS was insolvent. The documents supporting the conclusion that BLMIS was a fraudulent enterprise will include BLMIS customer account ledgers, records and statements; portfolio management reports and portfolio transaction reports; correspondence from customer files; bank statements and financial records for the investment advisory business; documents supporting the calculation of purported convertible arbitrage trades; daily stock records; documents describing BLMIS computer systems used to create customer statements; documents related to BLMIS trades purportedly settled by the Depository Trust & Clearing Corporation; materials related to BLMIS's purported options trading activity; and FOCUS reports and filings with the U.S. Securities and Exchange Commission. The

documents supporting the conclusion that BLMIS was insolvent will include investment advisory business cash balances and customer account liabilities; market making and proprietary trading businesses cash balances and securities data; and documents related to the appraisal and valuation data of the market making and proprietary trading businesses. Counsel for Defendant may request a non-disclosure agreement from the Trustee by sending a written request to [MadoffDataRooms@bakerlaw.com](mailto:MadoffDataRooms@bakerlaw.com). Once counsel has executed this non-disclosure agreement and returned it to the Trustee, counsel will be provided with access to E-Data Room 1 and a user guide containing a detailed index of the materials in E-Data Room 1, including a listing of public and/or commercially available market information relied upon by the Trustee.

By way of further disclosure, the Trustee also identifies the following documents upon which he may rely:

- a) Exhibits to the Complaint.
- b) Documents referred to in the Complaint.
- C. Rule 26(a)(1)(A)(iii). A computation of each category of damages claimed by the disclosing party—who must also make available for inspection and copying as under Rule 34 the documents or other evidentiary material, unless privileged or protected from disclosure, on which each computation is based, including materials bearing on the nature and extent of injuries suffered.

The Trustee's computation of damages is included on Exhibit B to the Complaint. The documents on which those computations are based are those related to deposits to and withdrawals from Defendants' BLMIS accounts and are being produced as set forth in section B.1 above. In addition, the Trustee seeks prejudgment interest of 9% per annum and all applicable interest, costs, and disbursements of this action.

- D. Rule 26(a)(1)(A)(iv). For inspection and copying as under Rule 34, any insurance agreement under which an insurance business may be liable to satisfy all or part of a possible judgment in the action or to indemnify or reimburse for payments made to satisfy the judgment.

To the Trustee's knowledge, there are no insurance agreements under which an insurance business may be liable to satisfy all or part of a possible judgment in the instant action, or to indemnify or reimburse for payments made to satisfy the judgment.

Dated: December 21, 2015

By: /s/ Keith R. Murphy  
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Substantively Consolidated SIPA Liquidation  
of Bernard L. Madoff Investment Securities  
LLC and the Estate of Bernard L. Madoff*

**CERTIFICATE OF SERVICE**

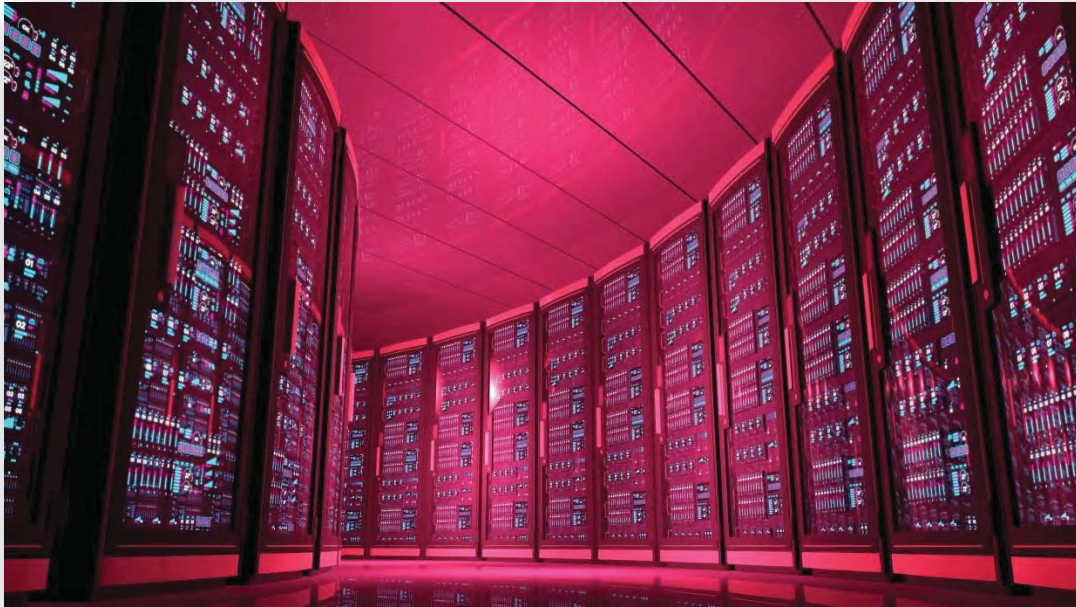
I hereby certify that a true and accurate copy of the foregoing was served this 21st day of  
December, 2015 by electronic mail and Fed-ex upon the following:

Helen Davis Chaitman  
CHAITMAN LLP  
465 Park Avenue  
New York, NY 10022  
Tel.: (888) 759-1114  
Email: hchaitman@chaitmanllp.com

/s/ Keith R. Murphy  
*An Attorney for Irving H. Picard, Trustee  
for the Substantively Consolidated SIPA  
Liquidation of Bernard L. Madoff Investment  
Securities LLC and the Estate of Bernard L.  
Madoff*



# BakerHostetler



## THE MADOFF TRUSTEE PROOF OF FRAUD AND INSOLVENCY E-DATA ROOM 1

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### USER GUIDE FOR OUTSIDE LITIGATION COUNSEL



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## THE MADOFF TRUSTEE PROOF OF FRAUD AND INSOLVENCY DATA ROOM (rev. 9/2018)

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## THE MADOFF TRUSTEE PROOF OF FRAUD AND INSOLVENCY DATA ROOM (rev. 9/2018)

### I. INTRODUCTION AND OVERVIEW

The Madoff Trustee Proof of Fraud and Insolvency Data Room ("E-Data Room 1") is an electronic repository made available to attorneys representing parties involved in litigation initiated by Irving H. Picard (the "Trustee"), as trustee for the liquidation of Bernard L. Madoff Investment Securities LLC ("BLMIS") under the Securities Investor Protection Act, 15 U.S.C. §§ 78aaa, et seq. ("SIPA") and the substantively consolidated estate of Bernard L. Madoff ("Madoff").

Pursuant to the Order dated November 10, 2010, (1) Establishing litigation case management procedures for avoidance actions and (2) Amending the February 16, 2010 Protective Order issued by the U.S. Bankruptcy Court (the "Case Management Order"), as modified by subsequent Orders, E-Data Room 1 contains certain core information<sup>1</sup> that relates to

- The financial condition of BLMIS
- The operations of BLMIS, including the Ponzi scheme
- Customer account documents and correspondence with BLMIS
- Other internal records of BLMIS
- Transfers of money to, from and within BLMIS
- Regulatory disclosures made by BLMIS

Documents and data provided in E-Data Room 1 are organized generally by source, then by type of document/data. This organizational structure does not and is not intended to reflect the document/information management system used by BLMIS during its operation. The Trustee's information regarding BLMIS operations is based on information and belief, not personal knowledge.

As more fully set forth below, access to E-Data Room 1 is limited to counsel of record for defendants in certain actions brought by the Trustee ("Outside Litigation Counsel") to search for, review, and request production of documents that are identified in the Trustee's Initial Disclosures or are responsive to document requests served on the Trustee.

Pursuant to the Order Establishing Expanded Access to E-Data Room 1, entered on January 12, 2012 in *SIPC v. BLMIS, et al.*, Adv. Pro. No. 08-071989(BRL), access to E-Data Room 1 may be granted to the attorneys of record for defendants in this and related adversary proceedings. In a good faith effort to prevent disclosure of Personally Identifiable Information ("PII"), the Trustee redacted dates of birth, personal addresses, and other identifying information such as Social Security Numbers, bank account numbers, taxpayer identification numbers, and other similar numbers and information that appear on

---

<sup>1</sup> As a result of Judge Stanton's order dated December 15, 2008, the Trustee has assumed possession of and/or has access in conjunction with the FBI to approximately 11,700 boxes of BLMIS paper documents and 19,000 media sources containing electronically stored information ("ESI"), which include, but are not limited to, desktop computers, laptop computers, AS/400 computers, hard drives, network storage, microfilm, microfiche, backup tapes, PDAs, floppy disks, compact discs, and memory cards. The Trustee has preserved all of the data of which he assumed possession on or subsequent to December 15, 2008.

With respect to these materials, some paper and some ESI are stored in one or more databases, exceeding 5 terabytes or approximately 34 million documents. Materials not contained in the databases are stored either in Long Island City, NY or Rosendale, NY.

From this large collection of evidence and for the convenience of the defendants, the Trustee is making available in E-Data Room 1 certain core documents related to the topics listed above, including documents and data identified in the Documents Considered lists associated with reports prepared by the Trustee's experts, including Bruce Dubinsky (Duff & Phelps), Matthew Greenblatt (FTI Consulting), and Lisa Collura (FTI Consulting). The Trustee cannot and does not represent that all documents related to these topics have been captured in E-Data Room 1. Nothing in E-Data Room 1 is intended to limit the scope of discovery permitted by the Court.



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### THE MADOFF TRUSTEE PROOF OF FRAUD AND INSOLVENCY DATA ROOM (rev. 9/2018)

many of the documents in E-Data Room 1. Where such information has been removed from a page, a notation indicating "Redacted" is displayed.

The use of any "Confidential Material," as defined in the Litigation Protected Order entered on June 6, 2011 in *SIPC v. BLMIS, et al.*, Adv. Pro. No. 08-071989(BRL) (the "LPO"), contained within E-Data Room 1 is governed by the parameters set forth in the Non-Disclosure Agreement ("NDA") that each user must execute to access E-Data Room 1, the LPO, and any subsequently entered court order(s). To the extent disclosure may be allowed under the aforementioned parameters, anyone who wishes to use data containing material confidential in nature will be required to use redaction, data deletion, masking, and/or any other appropriate measures as may be required. Disclosure to any party or counsel, whether inadvertent or otherwise, is not intended to waive privilege, work product protection or confidentiality.



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## THE MADOFF TRUSTEE PROOF OF FRAUD AND INSOLVENCY DATA ROOM (rev. 9/2018)

### II. ACCESS TO E-DATA ROOM 1

The Trustee is providing counsel with two platforms in order to search for, review, and produce documents from E-Data Room 1. The first platform is a web-based site called the **Madoff Trustee E-Data Room 1 Proof of Fraud and Insolvency Information Portal** (the "Information Portal"), to enable Outside Litigation Counsel to request database user credentials and to request documents identified for production from the Relativity E-Data Room 1 database. The Information Portal is a site separate and apart from the **Madoff Trustee E-Data Room 1 Proof of Fraud and Insolvency Relativity Data Room** ("E-Data Room 1"), which is a review database hosted in Relativity. This manual contains information concerning the data room work flow processes and access and use of the Information Portal. Detailed instructions regarding navigating E-Data Room 1 are provided separately in the Relativity Database Users Guide. All documents and instructions referenced in the materials provided here are also available on the Information Portal.

#### A. Who May Gain Access

Access to E-Data Room 1 will be provided to counsel of record for defendants ("Outside Litigation Counsel") in the actions seeking solely fictitious profits in which a Notice of Applicability was filed pursuant to the Order (1) Establishing Litigation Case Management Procedures for Avoidance Actions and (2) Amending the February 16, 2010 Protective Order, dated November 10, 2010 [ECF No. 3141](the "Avoidance Actions").

#### B. How to Gain Access and Using the Information Portal

To access the Information Portal, users should use the following link and log in with the credentials provided via email from the Madoff Data Rooms. Users should add **\*.bhdrrequestinfo.com** as a Trusted Site within their browser settings (e.g., for Internet Explorer, select Internet Options\Security) <https://www.bhdrrequestinfo.com/>

*Please note: In order to provide the maximum level of security; the Hypertext Transfer Protocol (HTTP) has been disabled for the Information Portal. Users should always use the Hypertext Transfer Protocol Secure (HTTPS) to assure secure communication between Baker Hostetler servers and the user's computer.*

*Users should add \*@bakerlaw.com to their email system's white list to ensure communications are not filtered as spam.*



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## THE MADOFF TRUSTEE PROOF OF FRAUD AND INSOLVENCY DATA ROOM (rev. 9/2018)



### QUICK TIP

When entering user credentials, **TYPE** the username and password in lieu of copy/pasting

### INVALID LOGIN ATTEMPTS

Three (3) attempts at logging in with the incorrect credentials will lock the account. If a user's account is locked, the user will need to contact Madoff Data Rooms at [madoffdatarooms@bakerlaw.com](mailto:madoffdatarooms@bakerlaw.com) to reset his/her Information Portal credentials.



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## THE MADOFF TRUSTEE PROOF OF FRAUD AND INSOLVENCY DATA ROOM (rev. 9/2018)

### III. ACCESSING THE INFORMATION PORTAL

#### A. Non-Disclosure Agreement

After logging onto the **Information Portal**, the user will need to review and approve the Non-Disclosure Agreement (“NDA”), set forth and approved by the Court. By selecting the check box below and pressing “Submit,” the user agrees to the terms referenced in the NDA. A copy of the NDA will be provided by email for reference. A copy of the NDA can also be found in the “Documents” section on the Information Portal. For any NDA-related inquiries, please contact [MadoffDataRooms@bakerlaw.com](mailto:MadoffDataRooms@bakerlaw.com).

The screenshot displays the 'MADOFF TRUSTEE E-DATA ROOM 1 INFORMATION PORTAL' interface. At the top, it says 'WELCOME JASPAH DOCKENBERG (LLP, YOU ARE LOGGED IN FOR: 10-04297 SARKIS, ET AL.)'. The main content area is titled 'UNITED STATES BANKRUPTCY COURT SOUTHERN DISTRICT OF NEW YORK' and 'SECURITIES INVESTOR PROTECTION CORPORATION, Plaintiff v. BERNARD L. MADOFF INVESTMENT SECURITIES LLC, Defendant'. It includes case details: 'In re: BERNARD L. MADOFF, Debtor', 'No. 08-01789 (SMB) SIPA Liquidation (Substantively Consolidated)', and 'NON-DISCLOSURE AGREEMENT FOR E-DATA ROOM 1'. The text of the agreement is visible, starting with 'WHEREAS this non-disclosure agreement (the "Agreement") supplements the Securities Investor Protection Corporation v. Bernard L. Madoff Investment Securities LLC, et al., Adv. Pro. No. 08-01789 (BRL) Litigation Protective Order entered on June 5, 2011 [Dkt. 4137] (the "Litigation Protective Order"), and any subsequent amendments or modifications thereto;'. At the bottom, there is a checkbox labeled 'By checking this box I agree to the terms of the Non-Disclosure Agreement.' and a 'Submit' button, which is highlighted with a red circle and an arrow.

#### B. Navigation Area

The navigation across the top of the Information Portal provides links to various sections of the site:

1. **Home:** Provides access to the Information Portal home page detailing general information and contact details.
2. **Relativity Credentials:** Management of Outside Litigation Counsel Relativity credentials.
3. **Productions:** Management of Outside Litigation Counsel Relativity productions.
4. **Technical Questions:** Provides contact information for obtaining technical information regarding E-Data Room 1 functionality, assistance with technical issues, etc.
5. **Documents:** Provides access to supporting documents and guides related to E-Data Room 1 and Information Portal.

The screenshot shows the navigation bar of the 'MADOFF TRUSTEE E-DATA ROOM 1 INFORMATION PORTAL'. It includes a 'WELCOME' message and 'YOU ARE LOGGED IN FOR: JASPAH DOCKENBERG (LLP, YOU ARE LOGGED IN FOR: 10-04297 SARKIS, ET AL.)'. Below this, there are five numbered links: 1 Home, 2 Relativity Credentials, 3 Productions, 4 Technical Questions, and 5 Documents, followed by a 'Logout' link. The links are numbered 1 through 5, corresponding to the list in the previous block.





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## THE MADOFF TRUSTEE PROOF OF FRAUD AND INSOLVENCY DATA ROOM (rev. 9/2018)

### C. Requesting E-Data Room 1 Credentials

Click on **Relativity Credentials** on the Navigation area at the top to begin the steps to request credentials for access to the Relativity E-Data Room 1 Database.

Follow these steps to request credentials to E-Data Room1. Once the user's credentials have been setup, he/she will receive a confirmation email from the Madoff Data Rooms

- STEP 1. •Select **+[ADD]**
- STEP 2. •Fill in the user(s) First Name, Last Name, Email and whether they want to receive Portal Alerts
- STEP 3. •Select **"Add User Request"**. You may remove any users before clicking Submit.
- STEP 4. • When all users have been added, select the **"Submit"** Button.
- STEP 5. •Select the **"Confirm Submission"** on the confirmation window to continue.



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### THE MADOFF TRUSTEE PROOF OF FRAUD AND INSOLVENCY DATA ROOM (rev. 9/2018)

ADD NEW USER

• First Name: Jane

• Last Name: Smith

• Email: Jane.Smith@test.com

• Portal Alerts: No

ADD USER REQUEST

#### Information Portal Email Alerts:

By selecting "Yes" for Portal Alerts, the selected user will receive notifications from the Information Portal when alerts are generated. This function can be updated at any time by selecting **[EDIT]** on the table to update the Portal Alert options and then by selecting Yes/No in the pop-up window.

EDIT USER

• First Name: John

• Last Name: Smith

• Email: jsmith@test.com

• Portal Alerts: Yes

SAVE USER

#### INFORMATION PORTAL FIELDDED INFORMATION

Please see APPENDIX D. INFORMATION PORTAL FIELDDED INFORMATION for a description of the fields currently on the Information Portal.



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### THE MADOFF TRUSTEE PROOF OF FRAUD AND INSOLVENCY DATA ROOM (rev. 9/2018)

#### D. Requesting Documents for Production

E-Data Room 1 users do not have the ability to print or download items from E-Data Room 1. To obtain copies of documents or data posted in E-Data Room 1, users must submit requests for production of such documents/data using the Information Requests protocols as follows:

#### Review and Production of E-Data Room 1 materials

- One Relativity Saved Search Folder will be created for each law firm for a specific Adversary Proceeding Number, using the following format: APN\_Firm Name (EX: 10-12345\_BakerlawLLP).
- The Relativity Saved Search folder will be shared among users from the same law firm for a particular Adversary Proceeding Number.
- One Relativity "Coding Layout" will be created for each law firm involved with a specific Adversary Proceeding Number. The Coding Layout name will use the following format: APN\_Firm Name.
- Each user from a specific law firm for a specific Adversary Proceeding Number will use the same assigned Coding Layout to identify and "tag" documents of interest. No user other than a user from that law firm for the specific Adversary Proceeding Number will be able to access or view documents tagged in that assigned Saved Search Folder or Coding Layout.
- To obtain copies of E-Data Room 1 items of interest, a user must
  - Tag the items in the database using the appropriate "To Produce" selection provided on the Coding Layout.
  - Log on to the Information Portal. <https://www.bhdrrequestinfo.com>
  - Complete and submit the E-Data Room 1 Production Request form
    - The E-Data Room 1 Production Request form will enable users to request production of all documents tagged "To Produce" on the Relativity Coding Layout.
    - The production set will not include duplicate documents.
- Prior to production, the Trustee's attorneys will review all items to be produced for confidentiality and appropriate redaction. Where production of the same documents is requested by multiple users from the same law firm, the Trustee will de-duplicate during preparation of the production set.

Within the Information Portal, selecting the "Relativity Production" link will take Outside Litigation Counsel to the section where users can easily manage Relativity document production requests. More specifically, Outside Litigation Counsel will be able to track the date of the request, the requested production format, the total number of documents and pages requested, and the date on which the production was completed. Please note, only one request for production may be entered in a business day.

Document Production Response Time - Document Production Requests are expected to take between 6-8 business days to process, from the date of the request. This time frame includes setup, processing and completion time. Weekends and holiday are not included in the 6-8 business days. Please see the holiday schedule posted in the "Documents" section to view the holiday schedule.

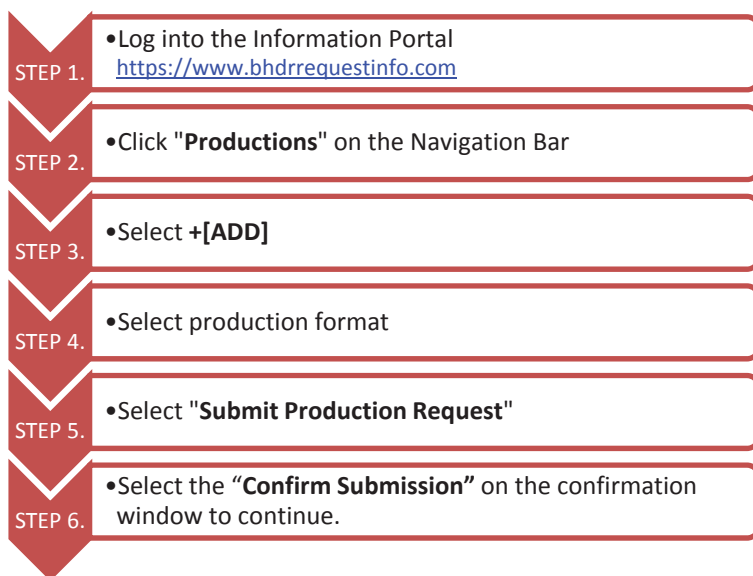


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**Document Production Format** – Users are provided two production format choices: “PDFs, fielded data provided in Excel format and OCR text files” or “Single Page Tiffs, Doc Level Text, DAT file for fielded data, OPT and LFP image load files.”

Once documents have been tagged in Relativity, follow the steps below to request documents for production.



All documents tagged earlier than 6:00 pm ET for that business day will be processed as part of the production request. \*Please note, only one request for production may be entered in a business day.

The Production Request Status table will track all production requests submitted, as shown in the screenshot below.

Search For:		In Column: Request Date	▼	Search	Reset
DATE OF REQUEST	REQUESTED FORMAT	PRODUCTION FIELD/TAG	TOTAL DOCUMENTS	TOTAL PAGES	READY FOR RELEASE
2/18/2016	PDFs, fielded data provided in Excel format and OCR text files.	10-04450_TEST	200	2500	
⊕[ADD]					
Submission Status: 1 past item(s) submitted.					
Please note only one request for production may be submitted per business day.					

### E. Technical Support

For technical support or assistance using the Information Portal or E-Data Room 1, please email the Madoff Data Room Team at [MadoffDataRooms@bakerlaw.com](mailto:MadoffDataRooms@bakerlaw.com).

To ensure that users receive all email communications from the Trustee's Madoff Data Rooms team, add [\\*@bakerlaw.com](mailto:@bakerlaw.com) to your email system's "white list" to ensure communications are not filtered as spam. This information is also available in the Technical Questions section on the Information Portal.



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## THE MADOFF TRUSTEE PROOF OF FRAUD AND INSOLVENCY DATA ROOM (rev. 9/2018)

### IV. E-DATA ROOM 1 CONTENTS

#### A. Overview

##### i. E-Data Room 1 Contents

E-Data Room 1 contains

- Selected scanned hard copy documents collected from BLMIS facilities
- Selected processed data from BLMIS microfilm, electronically stored information, and other BLMIS datasources
- Selected scanned and processed data and documents obtained from third party sources

The terms and provisions of all applicable protective orders apply to the contents and use of E-Data Room 1.

##### ii. Searchability

- Objective information and coding about documents and data is provided as fielded information. Users may perform searches in any field. Fielded information is available about all documents and data posted in E-Data Room 1. For details and descriptions of fielded information and coding provided in E-Data Room 1, please see the discussion below and Appendix D.
- Users may also use Relativity's Content Search function to perform text searches across all documents/data in E-Data Room 1 or within a collection. Instructions for performing searches can be found in the Relativity Quick Start Guide and the Relativity Database User Guide available on the Information Portal.
  - All documents in E-Data Room 1 have been processed using optical character recognition (OCR) technology or are otherwise rendered content-searchable to the extent possible.
  - The Trustee used OCR technology in a good faith attempt to provide searchable versions of scanned documents. OCR technology is not perfect, and the OCR process may result in errors in the visible text. The Trustee makes no warranties regarding the quality of the OCR process.
  - The original scanned versions of all OCR'd documents are posted in E-Data Room 1 along with available searchable text. If there are differences between the original and the searchable versions, the original version takes precedence.

##### iii. Miscellaneous

Counsel for the Trustee will not be liable for any technical issues concerning E-Data Room 1 caused by technical constraints, errors, or malfunctions beyond the Trustee's control. Any inadvertent disclosure resulting from technical constraints, errors, or malfunctions will not be construed as a waiver of privilege, work product protection or confidentiality.



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## THE MADOFF TRUSTEE PROOF OF FRAUD AND INSOLVENCY DATA ROOM (rev. 9/2018)

### B. Data In E-Data Room 1

BLMIS information is available from data extracted from BLMIS data sources, primarily the BLMIS AS400 and related applications<sup>2</sup>. Other information was archived and stored by BLMIS on microfilm. The DATA section in E-Data Room 1 contains copies of reports and some “near-native” data obtained from these BLMIS datasources.

Summaries regarding BLMIS datasources are provided below. For more information, see **Appendix A**.

The E-Data Room 1 DATA section is organized within the Relativity “Issue Trees” to reflect the original datasource as follows.

- **AS400 Datasource**
  - Other (programming, screenshots, etc.)
  - SETCSH17
  - STMTPro
  - StorQM
    - 1099 Forms
    - Account Statements
    - Portfolio Management Reports (PMRs)
- **Microfilm**
  - Account Ledgers
  - Other Reports

The original sources for items in the E-Data Room 1 DATA Issue Trees are as follows.

- **Microfilm** - Customer data (customer ledgers, Year-to-Date (“YTD”) and other summary reports) from BLMIS microfilm for the period 1978 – November 1995.
- **SETCSH17 Table** - The SETCSH17 (“Settled Cash”) reports are generated from BLMIS monthly backup tapes containing the SETCSH17 table. SETCSH17 data is available for years 1998-2008. The SETCSH17 table is a prepared datasource created from extracted and restored BLMIS data that was aggregated by BLMIS account number to facilitate review. SETCSH17 reports in E-Data Room 1 are presented in PDF format and contain all transactions for the applicable account number, organized by month. The MS Excel files that were prepared from the extracted SETCSH17 data are also available in E-Data Room 1.
- **STMTPro** - STMTPro (“StatementPro”) is a proprietary AS400 add-on application developed by BLMIS programmers. Restored customer account statements using the custom STMTPro program are available to the extent the STMTPro tapes have been restored and processed. Many of the STMTPro tapes were stored with paper indices (“tape wrappers”) that provide selected information such as dates and account numbers. To the extent available, copies of the scanned tape wrappers are also in E-Data Room 1.
- **StorQM** - StorQM is a report-writing application used to generate reports from the AS400 data source. BLMIS customer data (customer account statements, YTD and other summary reports)

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<sup>2</sup> The original native files are not provided in E-Data Room 1.



- When BLMIS prepared account statements for forwarding to customers, a custom StorQM “overlay” was used to generate statements that included the BLMIS logo, special coloring of data rows, and other custom printing features, as portrayed below.
- The processed StorQM reports in E-Data Room 1 were generated in “native-like” format and do not contain the overlay that appeared on the statements received by BLMIS customers.

### BLMIS StorQM Overlay:

[illegible]

- **StorQM 1099 Forms** - Using the StorQM report-writing application, BLMIS generated IRS Form 1099s from the AS400 datasource. The processed Form 1099 documents available in E-Data Room 1 relate only to a few selected customers.

Additional customer-specific data has been produced separately by the Trustee and may not be available in E-Data Room 1.

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### THE MADOFF TRUSTEE PROOF OF FRAUD AND INSOLVENCY DATA ROOM (rev. 9/2018)

#### C. Documents in E-Data Room 1

The DOCUMENTS section in E-Data Room 1 contains electronic copies of hard copy documents collected from BLMIS facilities or obtained from other sources, plus associated objective fielded information. An E-Data Room 1 “Document” may also be the electronic print version of electronically stored information obtained from a BLMIS datasource.

#### Organization of E-Data Room 1 Documents

For user convenience and guidance, E-Data Room 1 Documents are organized generally by source, then by type of document/data. This organizational structure does not and is not intended to reflect the document/information management system used by BLMIS during its operation. The E-Data Room 1 DOCUMENTS section does not constitute a representation of the full scope or location of BLMIS documents.

The E-Data Room 1 DOCUMENTS section is organized in Relativity “Issue Trees” as follows.

- **BLMIS Documents and Work Papers** – BLMIS work papers, charts, notes, reports, etc. collected from the Lipstick Building, Bulova, and the Queens warehouse; including documents from selected BLMIS customer files and documents and correspondence from BLMIS customers. Also includes selected processed and Bates-numbered items from BLMIS electronically stored information.
  - **Purported Trading Activity** – processed microfilm and scanned documents that are responsive to search queries regarding purported BLMIS trading activities that were performed pursuant to instructions from and in response to document requests received from opposing counsel
- **BLMIS Operational Documents** – computer manuals, procedure logs, diagrams, etc. regarding BLMIS operations, including technology (not a comprehensive collection).
- **FINRA** – includes documents prepared or filed by BLMIS with FINRA or NASD (predecessor to FINRA).
- **MSIL Documents and Work Papers** – Madoff Securities International Ltd (“MSIL”) is an entity associated with BLMIS that is subject to a UK liquidation proceeding overseen by a court-appointed liquidator (the “JPL Liquidator”). The majority of MSIL documents were collected from MSIL headquarters located in London, England and an offsite storage facility. Additional MSIL work papers, charts, notes, reports, etc. were collected from BLMIS locations. To the extent permitted by UK law as determined by the JPL Liquidator, selected MSIL documents are available in E-Data Room 1.
- **Other Public Documents** – publicly available documents provided for convenience, includes without limitation the report prepared by the SEC Office of Inspector General and related exhibits, transcripts of relevant plea allocutions or other testimony, transcripts and exhibits from the 2013/2014 federal (USDC, SDNY) criminal trial of key BLMIS employees, pleadings from civil or criminal proceedings, and pricing or other information provided by governmental agencies.
- **Other Third Party Documents** – includes selected documents provided by selected third parties in response to subpoenas or document requests and third-party documents obtained from public or commercial sources (provided for convenience); see the discussion below regarding FINANCIALS for information regarding documents from banking/financial and institutions and related.
- **SEC** – includes public regulatory filings (provided for convenience) and documents produced to the Trustee by the SEC.





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## THE MADOFF TRUSTEE PROOF OF FRAUD AND INSOLVENCY DATA ROOM (rev. 9/2018)

- **Trustee Documents** – includes exemplar claims-related documents provided by the Trustee and documents filed or obtained by the Trustee (provided for convenience).

For more information regarding items posted in the E-Data Room 1 DOCUMENTS section, see **Appendix B**.

### D. E-Data Room 1 FINANCIALS Section

The FINANCIALS section in E-Data Room 1 contains electronic copies of hard copy financial and accounting documents and electronic data collected from BLMIS facilities or obtained from other sources<sup>3</sup>, plus associated objective fielded information.

The items posted in the E-Data Room 1 FINANCIALS section are organized in Relativity “Issue Trees” in alphabetical order according to entity name. Where applicable, separate subfolders for each account held at the banking/financial institution have been created to enable access to account-specific information. Separate folders have also been created for the following BLMIS or MSIL documents:

- **BLMIS Financial Statements** – includes copies of audited BLMIS financial statements (1997-2008) and related documents.
- **BLMIS General Ledgers** – includes copies of BLMIS general ledgers available between 1996 and 2008.
- **Invoices & Related** – includes copies of selected hard copy invoices and related documents regarding BLMIS House 17 or House 5 transactions.
- **MSIL Financials** – includes copies of selected documents regarding the financial condition and operations of MSIL and predecessor entities, including annual returns, financial statements and directors’ reports, and other documents or data filed with the UK Companies House or obtained from processed data/documents from BLMIS or MSIL data sources. All processed data/documents obtained from MSIL data sources are available in the US with the express permission of the JPL liquidator.

### E. Documents Released Into E-Data Room 1

Easy access to documents and files recently released into E-Data Room 1 is available by selecting Relativity “Issue Tree” values in the DOCUMENTS RELEASED “Issue Trees” as follows:

- **Released within the last 30 Days** – Provides access to documents released within the last 30 days.
- **Released within the last 60 Days** – Provides access to documents released within the last 60 days.
- **Released within the last 90 Days** – Provides access to documents released within the last 90 days.
- **Released post 90 Days** – Provides access to documents released more than 90 days ago.

### F. E-Data Room 1 Fielded Information

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<sup>3</sup> The Trustee collected documents regarding financial accounts or transactions relating to the assets of BLMIS, BLMIS-related entities including MSIL, and Bernie and Ruth Madoff. Documents that relate to asset amounts that do not affect the insolvency analysis of BLMIS have not been posted in E-Data Room 1. Copies may be provided upon request.



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Objective information about items posted in E-Data Room 1 is provided as fielded information. Users may perform searches in any field. Fielded information is available about all items in E-Data Room 1, whether or not the data or document is amenable to content searching.

The fielded information is from a variety of sources, including original metadata from processed native files, coded fields based on information collected during evidence collection, and system-generated information.

The fielded information is provided by the Trustee as a good faith attempt to provide source information regarding data and documents that are made available in E-Data Room 1.

In some instances, the fielded information was prepared by the Trustee's consultants or agents. Presentation of the fielded information does not and is not intended to waive privilege or confidentiality.

For details and descriptions of the field names and fielded information provided in E-Data Room 1, see Appendix D. The field names and descriptions are also available in the **E-Data Room 1 Relativity Quick Start Guide**.

### G. Items Excluded from E-Data Room 1

The following items are not included in E-Data Room 1:

1. Account-Specific Core Account Documents
  - Core Account Documents ("CADs") regarding BLMIS accounts have been defined to include: (a) the BLMIS customer account file to the extent it has been located; (b) customer account statements (including all iterations) and ledgers generated from the StorQM data source or restored from microfilm; and (c) Portfolio Management Reports ("PMRs") and Portfolio Transactions Reports ("PMTs") generated from the StorQM datasource or restored from microfilm.
  - Core Account Documents (i.e., the customer file plus all available account statements and PMRs and PMTs) for each account number have been or will be produced separately to the account-holder or counsel and will not be provided in E-Data Room 1, except as follows:
    - The account-specific customer account statements, ledgers, PMRs, and PMTs are also available in the DATA section of E-Data Room 1 in the Issue Trees that reflect the source from which they were obtained (i.e., AS400 datasource or microfilm).
2. BLMIS Datasources
  - Native or "near-native" AS400 data tables used to generate Customer Statements, YTD summary reports, or other reports.
3. Documents received from third parties that have been designated "confidential"
  - Unless the producing party has consented to disclosure/production of such documents.
4. Transcripts of depositions, Rule 2004 examinations, and interviews conducted of certain MSIL personnel under the supervision of the JPL liquidator
  - Transcripts of testimony not designated "confidential" will be made available upon request
  - Transcripts of testimony designated "confidential" will not be made available without prior written consent of the witness or counsel.





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5. Documents and data that are publicly available, except as otherwise indicated
6. Commercially available resources used by the Trustee, except as otherwise indicated, including without limitation:
  - Database of historic trading information prepared and maintained by the University of Chicago, Center for Research in Security Prices ("CRSP")
  - Database of historic trading information prepared and maintained by Chicago Board Options Exchange ("CBOE")
  - DTCC documents, including Participant Position Statements for periods from 2002-2008, DTCC Clearing Fund Deposit Report for period ended December 11, 2008
    - i. Selected Consolidated Participant Position Statements have been posted in E-Data Room 1.
    - ii. Numerous DTCC reports and data were contained in boxes prepared and stored by BLMIS, and available via a DTCC terminal on-site at the Lipstick Building (not provided in E-Data Room 1).
  - Information obtained from commercial services including subscription services or print publications regarding market trading activity or publicly traded companies, including company characteristics, historical financial performance, investment data, pricing, etc.
    - i. Numerous boxes prepared and stored by BLMIS contain documents obtained from Bloomberg and the Wall Street Journal, including documents providing pricing and performance information regarding securities (not provided in E-Data Room 1).



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## THE MADOFF TRUSTEE PROOF OF FRAUD AND INSOLVENCY DATA ROOM (rev. 9/2018)

### APPENDIX A

#### BLMIS PROCESSED DATA AND ELECTRONICALLY STORED INFORMATION ("ESI")

E-Data Room 1 contains Customer Account Statements, YTD summary reports, and other reports prepared from the processed BLMIS data.<sup>4</sup>

Fielded information provided in E-Data Room 1 is included to provide information regarding the physical media from which data was extracted and the BLMIS location (including custodian) of the media. This information is provided by the Trustee on information and belief and not from personal knowledge.

#### Description of BLMIS Processed Data and ESI in E-Data Room 1

- **AS400.** The IBM AS/400 ("the AS400") is a midrange server designed for small businesses and departments in large enterprises. The AS400 operating system is called the OS/400. One AS400 system was used by BLMIS for the Investment Advisory business ("House 17" or the "IA business") and a separate AS400 system was used for the Market Making & Proprietary Trading businesses (generally, "House 5"). Selected items regarding the AS400 are provided in E-Data Room 1.
- **ESI.** BLMIS had information and data in numerous forms and formats and available on different media. Selected processed and Bates-numbered items are provided in E-Data Room 1.
- **Microfilm.** BLMIS archived and stored historic data on microfilm reels. Generally, each reel contains labeling that gives an indication of the types of reports contained on the reel. Using the label information, a subset of the microfilm reels, and the reports contained therein, were identified for processing and Bates numbering. Customer account ledgers plus other periodic reports including reports related to customer accounts identified on the microfilm reels are provided in E-Data Room 1.
- **SETCSH17.** SETCSH17 (also referred to as "Settled Cash") is a data table maintained in the House 17 AS400 that contains transactional customer activity used to generate customer account statements. BLMIS archived this table on a monthly basis, purging the transactional data from the AS400 system after archive in order to preserve storage space. The SETCSH17 tables for years 1998-2008 maintained on backup tapes were identified and restored.

Although organized by month in the original BLMIS archives, the SETCSH17 reports provided in E-Data Room 1 are organized by account number to facilitate review. The SETCSH17 reports include the file name<sup>5</sup> of the original native file on the backup tape.

<sup>4</sup> The original native files are not provided in E-Data Room 1.

<sup>5</sup> There are two formats in which the native files are named:

1. EX: 506160000002\_001\_01033\_SETCSH17
  - The 18<sup>th</sup> and 19<sup>th</sup> characters in the file name represent the year of the backup (01, representing 2001)



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### THE MADOFF TRUSTEE PROOF OF FRAUD AND INSOLVENCY DATA ROOM (rev. 9/2018)

SETCSH17 reports are presented in E-Data Room 1 in PDF format and contain all transactions maintained on the backup tape for the applicable account number. The MS Excel (.xlsx) file containing the data presented on the PDF report is also available in E-Data Room 1. Production of the SETCSH17 reports is comprised of the PDF report plus the MS Excel (.xlsx) file.

- **STMTPro.** STMTPro (also referred to as “Statement Pro”) is a program developed by BLMIS and used with the House 17 AS400. The program was designed to create BLMIS customer statements outside the normal monthly processing of customer statements.

The AS400 data files required to reconstruct the customer statements generated by the STMTPro program were maintained on backup tapes. The STMTPro files provided in E-Data Room 1 were reconstructed using the STMTPro program and the required contemporaneous data tables stored on the STMTPro backup tapes.

- **StorQM.** Stor/QM (“StorQM”) is a MS Windows-based end-user query management and data access tool that uses computer output to laser disk (COLD) technology for information storage, retrieval and report generation. As originally developed, StorQM downloaded report data from a mainframe to a departmental file server for end-user access. It performed reconciliation, indexing, compression and archiving functions. A pattern analyzer reverse-engineered formatted reports into transaction data by matching line items in the reports with the proper column headings.

BLMIS archived customer account statements, YTD summary reports, and other AS400-generated reports to a secure digital optical storage system named “StorQM.” Data used for each of the statements/reports was downloaded from a file server that was populated by the AS400. The statements/reports provided in E-Data Room 1 were extracted using the StorQM application from the optical storage system. The BLMIS StorQM optical storage system used WORM (write once, read many) technology, allowing for access to historical statements/reports using the StorQM application.

- 
- Character nos. 20-22 represent the Julian date on which the backup was created (033, representing the 33rd day of the year or February 2).

2. EX: **506240020010\_001\_004\_03-04-1998\_SETCSH17**

- The date on which the backup was performed is captured in MM-DD-YYYY format in the native file name (03-04-1998, representing March 4, 1998)



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## THE MADOFF TRUSTEE PROOF OF FRAUD AND INSOLVENCY DATA ROOM (rev. 9/2018)

### APPENDIX B

#### BLMIS HARD COPY DOCUMENTS

Copies of selected scanned BLMIS documents from the BLMIS facilities are provided in E-Data Room 1.

Fielded information provided in E-Data Room 1 is included to provide information regarding the location (including custodian) from which documents were purportedly collected during the evidence collection process. Such location and custodian information is provided by the Trustee on information and belief and not from personal knowledge.

Documents were collected from three (3) floors at the Lipstick Building on which BLMIS had office and work areas: Floors 17, 18, and 19. In addition, BLMIS leased two (2) rooms in the Lipstick Building basement for storage purposes. BLMIS also leased an off-site “hot” disaster recovery site (“Bulova”) and long-term storage space at an off-site warehouse (the “Queens warehouse”).

Unique alpha designations were assigned to Lipstick Building locations (excluding the Lipstick Building basement) from which documents were collected, using BLMIS floor plans that identified office and workstation occupants. It is the Trustee’s understanding that the BLMIS floor plans were created and maintained by BLMIS employees.

- Copies of the floor plans for the three (3) floors (17, 18, and 19) occupied by BLMIS and associated companies are available in E-Data Room 1.
- BLMIS leased two storage rooms in the Lipstick Building basement – a smaller room (denoted Room A), and a large room (denoted Room B). All BLMIS documents collected from a Lipstick Building basement room are assigned designations to indicate the room from which they were collected (BA denotes Lipstick Basement Room A, BB denotes Lipstick Basement Room B)
- All documents collected from Bulova are assigned designation MBU (Madoff Bulova).
- Except as noted, all documents collected from the Queens warehouse are assigned designation MQW (Madoff Queens warehouse).

In early 2009, a separate report with associated exhibits was prepared by Lazard Frères (the “Lazard Report”) regarding the Madoff Market Making and Proprietary Trading business operations (“House 5”) to assist the Trustee in the sale of those businesses (“Project M”). Processed and Bates-numbered versions of the Lazard Report and associated exhibits (the “Lazard CD”) are also provided in E-Data Room 1.



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## THE MADOFF TRUSTEE PROOF OF FRAUD AND INSOLVENCY DATA ROOM (rev. 9/2018)

### APPENDIX C

#### E-DATA ROOM 1 INFORMATION PORTAL FIELDDED INFORMATION

##### RELATIVITY CREDENTIALS FIELDS

INFORMATION PORTAL FIELD NAME	DESCRIPTION
FIRST NAME	<ul style="list-style-type: none"><li>First Name of the user requesting access</li></ul>
LAST NAME	<ul style="list-style-type: none"><li>Last Name of the user requesting access</li></ul>
EMAIL ADDRESS	<ul style="list-style-type: none"><li>Email address of the user requesting access</li></ul>
PORTAL ALERTS	<ul style="list-style-type: none"><li>Contains values from the following fields: Date-Begin Date Range, Date-Check Clear Date, Date-Date Created, Date-Date Received, Date-Date Sent, Date-End Date Range, Date-Microfilm Ledger Date, Date-Statement Date</li></ul>
REQUESTED	<ul style="list-style-type: none"><li>Date Relativity credentials were requested</li></ul>
RELATIVITY USERID	<ul style="list-style-type: none"><li>Relativity username provided by CDS for access to E-Data Room 1</li></ul>
RELATIVITY PASSWORD	<ul style="list-style-type: none"><li>Relativity password provided by CDS for access to E-Data Room 1</li></ul>
CONFIRMATION SENT	<ul style="list-style-type: none"><li>Date on which Relativity credentials were sent to counsel</li></ul>

##### PRODUCTION REQUEST STATUS FIELDS

INFORMATION PORTAL FIELD NAME	DESCRIPTION
DATE OF REQUEST	<ul style="list-style-type: none"><li>Date on which Relativity production was requested</li></ul>
REQUESTED FORMAT	<ul style="list-style-type: none"><li>Production format for documents requested for production<ul style="list-style-type: none"><li>PDFs, fielded data provided in Excel format and OCR text files <i>OR</i></li><li>Single Page Tiffs, Doc Level Text, DAT file for fielded data, OPT and LFP image load files</li></ul></li></ul>
PRODUCTION FIELD/TAG	<ul style="list-style-type: none"><li>Name of Relativity Document Review Tag (i.e., 10-01234_Test Firm)</li></ul>
TOTAL DOCUMENTS	<ul style="list-style-type: none"><li>Total number of documents prepared for production</li></ul>
TOTAL PAGES	<ul style="list-style-type: none"><li>Total number of pages prepared for production</li></ul>
READY FOR RELEASE	<ul style="list-style-type: none"><li>Date on which Relativity production was completed and provided to the responsible Baker Hostetler attorney</li></ul>



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## THE MADOFF TRUSTEE PROOF OF FRAUD AND INSOLVENCY DATA ROOM (rev. 9/2018)

### APPENDIX D

#### FIELD INFORMATION INCLUDED IN E-DATA ROOM 1

##### MASTER SEARCH FIELDS<sup>6</sup>

E-DATA ROOM 1 FIELD NAME	DESCRIPTION
BATES_NUMBERING_COMBINED	<ul style="list-style-type: none"> <li>Field created to enable better search functionality and easier retrieval of specific page(s) within selected larger digital document(s)</li> </ul>
MASTER ACCOUNT NAME	<ul style="list-style-type: none"> <li>Contains values from the following fields: Account Name, Account Nickname</li> </ul>
MASTER ACCOUNT NUMBER	<ul style="list-style-type: none"> <li>Contains values from the following fields: Account Number, Account Number-Account Referenced, Account Number-Customer File, Account Number-Master Account, Account Number-Microfilm Account Number, Account Number-Microfilm SubAccount as Coded, Account Number-Microfilm SubAccount, Account Number-Old</li> </ul>
MASTER CUSTODIAN_LOCATION	<ul style="list-style-type: none"> <li>Contains values from the following fields: Custodian-ESI, Scanned Custodian-Source/Location</li> </ul>
MASTER DOCUMENT DATE	<ul style="list-style-type: none"> <li>Contains values from the following fields: Date-Begin Date Range, Date-Check Clear Date, Date-Date Created, Date-Date Received, Date-Date Sent, Date-End Date Range, Date-Microfilm Ledger Date, Date-Statement Date</li> </ul>
MASTER FILE NAME	<ul style="list-style-type: none"> <li>Contains values from the following fields: File Name, File Name-Original</li> </ul>
MASTER TITLE_DESCRIPTION	<ul style="list-style-type: none"> <li>Contains values from the following fields: Bank Document Description, Microfilm Document Name, Title</li> </ul>

##### DOCUMENT/IMAGE NUMBER FIELDS

E-DATA ROOM 1 FIELD NAME	DESCRIPTION
DocID	<ul style="list-style-type: none"> <li>Unique number assigned to each individual file/document in the database, the beginning Bates number of the file/document</li> <li>The Trustee's Bates numbers consist of an alpha prefix followed by 8-number sequential number <ul style="list-style-type: none"> <li>Documents obtained via subpoena are assigned 3- or 4-character prefixes assigned by the Trustee. Trustee-assigned Bates numbers are assigned to all documents obtained via subpoena, including documents previously numbered by the subpoenaed third-party.<sup>7</sup></li> </ul> </li> <li>Where the subpoenaed third-party has provided previously numbered documents/pages, the "original Bates number" information is also provided</li> </ul>

<sup>6</sup> The Master Search Fields were added during creation of E-Data Room 1 to enable better search functionality. They contain all values from the identified fields.

<sup>7</sup> With one exception, once assigned, the Trustee's Bates numbers assigned to documents obtained from third parties have not been changed. One set of documents obtained from third-party JPMorgan Chase that were assigned Trustee's Bates numbers beginning with alpha prefix JPMSBT were later re-assigned Trustee's Bates numbers beginning with alpha prefix JPMVAB.



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## THE MADOFF TRUSTEE PROOF OF FRAUD AND INSOLVENCY DATA ROOM (rev. 9/2018)

E-DATA ROOM 1 FIELD NAME	DESCRIPTION
EndDoc	<ul style="list-style-type: none"> <li>Ending Bates number of scanned page or range of pages</li> <li>The Trustee's Bates number consists of an alpha prefix followed by 8-number sequential number <ul style="list-style-type: none"> <li>Documents obtained via subpoena are assigned 3- or 4-character prefixes assigned by the Trustee. Trustee-assigned Bates numbers are assigned to all documents obtained via subpoena, including documents previously numbered by the subpoenaed third-party.</li> <li>Where the subpoenaed third-party has provided previously numbered documents/pages, the "original Bates number" information is also provided</li> </ul> </li> </ul>
Bates_Numbersing_Combined	<ul style="list-style-type: none"> <li>Field created to enable better search functionality and easier retrieval of specific page(s) within selected larger digital document(s)</li> </ul>
Bates Begin Attach	<ul style="list-style-type: none"> <li>Beginning Bates number of attachment</li> </ul>
Bates End Attach	<ul style="list-style-type: none"> <li>Ending Bates number of attachment</li> </ul>
Folder Begin Folder End	<ul style="list-style-type: none"> <li>Beginning and ending Bates numbers of unitized folder as captured during scanning. Because of scanning and unitization anomalies, may not be the same as the beginning Bates number of the physical folder in which the relevant pages appear.</li> </ul>
Original Bates Begin Original Bates End	<ul style="list-style-type: none"> <li>For items produced to Trustee, the original beginning and ending Bates numbers assigned by the producing party <ul style="list-style-type: none"> <li>As noted, all items produced to the Trustee have been assigned new ("master") Bates numbers by the Trustee</li> </ul> </li> </ul>
Relativity Image Count	<ul style="list-style-type: none"> <li>Provides page count information for a document, as indicated by the number of images associated with the database record</li> </ul>

### ALL E-DATA ROOM FIELDS

E-DATA ROOM 1 FIELD NAME	DESCRIPTION
(Saved Search)	<ul style="list-style-type: none"> <li>A saved set of criteria that returns documents that meet the specified criteria; four saved searches will initially be provided for Outside Litigation Counsel users</li> </ul>
_Issues	<ul style="list-style-type: none"> <li>System-generated field, provides information regarding Relativity Issue tag / folder / subfolder associated with documents</li> </ul>
Account Name	<ul style="list-style-type: none"> <li>Account name associated with BLMIS account number, as indicated on ANames table retrieved from BLMIS AS400 datasource</li> </ul>
Account Nickname	<ul style="list-style-type: none"> <li>Abbreviated account name associated with selected BLMIS accounts, as indicated on ANames table retrieved from BLMIS AS400 datasource</li> </ul>
Account Number	<ul style="list-style-type: none"> <li>BLMIS account number, as coded from microfilm and other coded datasources or as indicated in Madoff Inventory; not necessarily the same as the standardized BLMIS account number</li> </ul>
Account Number - Account Referenced	<ul style="list-style-type: none"> <li>For selected AS400 items, provides account number of account referenced in the item</li> </ul>
Account Number - Customer File	<ul style="list-style-type: none"> <li>BLMIS account number as indicated in relevant BLMIS customer file; not necessarily the same as the standardized BLMIS account number</li> </ul>
Account Number - Master Account	<ul style="list-style-type: none"> <li>Standardized BLMIS account number, as indicated on ANames table retrieved from BLMIS AS400 datasource</li> </ul>
Account Number - Microfilm Account Number	<ul style="list-style-type: none"> <li>For microfilm only, BLMIS account number, as standardized to reflect the latest versions of account numbers</li> </ul>
Account Number - Microfilm Subaccount Number	<ul style="list-style-type: none"> <li>For microfilm only, BLMIS sub-account number, as standardized to reflect varying account types as indicated by related BLMIS account numbers</li> </ul>





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## THE MADOFF TRUSTEE PROOF OF FRAUD AND INSOLVENCY DATA ROOM (rev. 9/2018)

E-DATA ROOM 1 FIELD NAME	DESCRIPTION
Account Number - Microfilm Subaccount Number as Coded	<ul style="list-style-type: none"> <li>For microfilm only, unabridged subaccount number as it appears on the customer ledger</li> </ul>
Account Number - Old Account Number	<ul style="list-style-type: none"> <li>BLMIS account number as indicated in selected BLMIS datasources</li> </ul>
Adversary Proceeding Number_Firm	<ul style="list-style-type: none"> <li>Document review coding field to be used by Outside Litigation Counsel users for tagging documents requested for production</li> </ul>
Artifact ID	<ul style="list-style-type: none"> <li>System-generated field, provides unique identifier for all database objects; available search option and in search results list display</li> </ul>
AS400 Library	<ul style="list-style-type: none"> <li>Programmatic information regarding processed AS400 data</li> </ul>
AS400 Member	<ul style="list-style-type: none"> <li>Programmatic information regarding processed AS400 data</li> </ul>
AS400 Procedure	<ul style="list-style-type: none"> <li>Programmatic information regarding processed AS400 data</li> </ul>
Author	<ul style="list-style-type: none"> <li>Author field from processed electronically stored information</li> </ul>
Bank Account Number	<ul style="list-style-type: none"> <li>Account number used by bank or other financial institution to identify an account; provided only for BLMIS and affiliated entities</li> </ul>
Bank Accountholder Name	<ul style="list-style-type: none"> <li>Name of accountholder associated with a specific account held at a bank or other financial institution, as identified by the financial institution; provided only for BLMIS and affiliated entities</li> </ul>
Bank Document Description	<ul style="list-style-type: none"> <li>Description of bank document, e.g., customer check, reconciliation report, deposit slip, etc.</li> </ul>
Bank Name	<ul style="list-style-type: none"> <li>Name of bank or financial institution associated with bank documents, including bank statements, checks, bank reports, reconciliation reports, etc.</li> </ul>
Bates Begin Attach	<ul style="list-style-type: none"> <li>Beginning Bates number of attachment</li> </ul>
Bates End Attach	<ul style="list-style-type: none"> <li>Ending Bates number of attachment</li> </ul>
Bates_Numbering_Combined	<ul style="list-style-type: none"> <li>Field created to enable better search functionality and easier retrieval of specific page(s) within selected larger digital document(s)</li> </ul>
BCC	<ul style="list-style-type: none"> <li>BCC field from processed electronically stored information</li> </ul>
BOX – Alphanit Barcode Digit	<ul style="list-style-type: none"> <li>All scanned BLMIS documents are assigned at least 1 barcode no. Depending on the size of the box, a single physical box number may have multiple barcode labels.</li> </ul>
CC	<ul style="list-style-type: none"> <li>CC field from processed electronically stored information</li> </ul>
Check Amount	<ul style="list-style-type: none"> <li>Dollar amount as indicated on face of check</li> </ul>
Check Number	<ul style="list-style-type: none"> <li>Check number as indicated on face of check</li> </ul>
Check Payee	<ul style="list-style-type: none"> <li>Payee as indicated on face of check</li> </ul>
Custodian	<ul style="list-style-type: none"> <li>Custodian field from processed electronically stored information</li> </ul>
Date - Begin Date Range	<ul style="list-style-type: none"> <li>Beginning date for SETCSH17 report, StorQM account statements and reports</li> <li>Check date for checks</li> <li>Statement date for selected bank statements</li> <li>Beginning date range for selected scanned documents</li> </ul>
Date - Check Clear Date	<ul style="list-style-type: none"> <li>Date on which check cleared according to applicable bank/financial institution records</li> </ul>
Date - Check Date	<ul style="list-style-type: none"> <li>Check date as indicated on face of check</li> </ul>
Date - Date Created	<ul style="list-style-type: none"> <li>Date created field from selected items obtained via subpoena or production to the Trustee, date created field from processed electronically stored information</li> </ul>
Date - Date Received	<ul style="list-style-type: none"> <li>Received field from processed electronically stored information</li> </ul>
Date - Date Sent	<ul style="list-style-type: none"> <li>Sent field from processed electronically stored information</li> </ul>
Date - End Date Range	<ul style="list-style-type: none"> <li>Ending date for SETCSH17 report, StorQM account statements and reports</li> <li>Check date for checks</li> <li>Statement date for selected bank statements</li> <li>Ending date range for selected scanned documents</li> </ul>
Date - Microfilm Ledger Date	<ul style="list-style-type: none"> <li>For microfilm only, indicates date of microfilmed ledger as coded</li> </ul>
Date - Statement Date	<ul style="list-style-type: none"> <li>Statement date for selected bank statements</li> </ul>
Deposit Slip	<ul style="list-style-type: none"> <li>Bates number of deposit slip associated with checks deposited into an account</li> </ul>





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## THE MADOFF TRUSTEE PROOF OF FRAUD AND INSOLVENCY DATA ROOM (rev. 9/2018)

E-DATA ROOM 1 FIELD NAME	DESCRIPTION
DocID	<ul style="list-style-type: none"> <li>Unique number assigned to each individual file/document in the database, the beginning Bates number of the file/document</li> <li>The Trustee's Bates numbers consist of an alpha prefix followed by 8-number sequential number <ul style="list-style-type: none"> <li>Documents obtained via subpoena are assigned 3- or 4-character prefixes assigned by the Trustee. Trustee-assigned Bates numbers are assigned to all documents obtained via subpoena, including documents previously numbered by the subpoenaed third-party.<sup>8</sup></li> </ul> </li> <li>Where the subpoenaed third-party has provided previously numbered documents/pages, the "original Bates number" information is also provided</li> </ul>
Document Category	<ul style="list-style-type: none"> <li>Search field, enables identification of all boxes/barcodes known to be associated with an individual, regardless of the location where the box/barcode was originally located, or where possible all boxes/barcodes containing a specific type of document (not comprehensive, generally based on the BLMIS box label or box contents description)</li> </ul>
Documents Released	<ul style="list-style-type: none"> <li>Used to identify documents newly released to E Data Room 1</li> </ul>
Edit	<ul style="list-style-type: none"> <li>Field to be used by Outside Litigation Counsel users to tag documents requested to be produced; available in search results list display</li> </ul>
EndDoc	<ul style="list-style-type: none"> <li>Ending Bates number of scanned page or range of pages</li> <li>The Trustee's Bates number consists of an alpha prefix followed by 8-number sequential number <ul style="list-style-type: none"> <li>Documents obtained via subpoena are assigned 3- or 4-character prefixes assigned by the Trustee. Trustee-assigned Bates numbers are assigned to all documents obtained via subpoena, including documents previously numbered by the subpoenaed third-party.</li> <li>Where the subpoenaed third-party has provided previously numbered documents/pages, the "original Bates number" information is also provided</li> </ul> </li> </ul>
Expert Reports	<ul style="list-style-type: none"> <li>Search field, enables identification of global and case-specific documents associated with the expert report(s) prepared regarding a specific case</li> </ul>
Extracted Text OR Full Text	<ul style="list-style-type: none"> <li>System-generated field, enables users to search across the extracted text or full text fields</li> </ul>
File Extension	<ul style="list-style-type: none"> <li>File extension</li> </ul>
File Name	<ul style="list-style-type: none"> <li>Provides file names of individual files, may be a rendered name for processed BLMIS data</li> </ul>
File Name - Original	<ul style="list-style-type: none"> <li>Original file name</li> </ul>
File Size	<ul style="list-style-type: none"> <li>System-generated field that provides file size information</li> </ul>
FileIcon	<ul style="list-style-type: none"> <li>Icon representing the document's Relativity native file type; available in search results list display</li> </ul>
Folder Begin Folder End	<ul style="list-style-type: none"> <li>Beginning and ending Bates numbers of unitized folder as captured during scanning. Because of scanning and unitization anomalies, may not be the same as the beginning Bates number of the physical folder in which the relevant pages appear.</li> </ul>
From	<ul style="list-style-type: none"> <li>From field from processed electronically stored information</li> </ul>
MASTER ACCOUNT NAME	<ul style="list-style-type: none"> <li>Contains values from the following fields: Account Name, Account Nickname</li> </ul>

<sup>8</sup> With one exception, once assigned, the Trustee's Bates numbers assigned to documents obtained from third parties have not been changed. One set of documents obtained from third-party JPMorgan Chase that were assigned Trustee's Bates numbers beginning with alpha prefix JPMSBT were later re-assigned Trustee's Bates numbers beginning with alpha prefix JPMVAB.



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## THE MADOFF TRUSTEE PROOF OF FRAUD AND INSOLVENCY DATA ROOM (rev. 9/2018)

E-DATA ROOM 1 FIELD NAME	DESCRIPTION
<b>MASTER ACCOUNT NUMBER</b>	<ul style="list-style-type: none"> <li>Search field created to enable enhanced search functionality</li> <li>Contains values from the following fields: Account Number, Account Number-Account Referenced, Account Number-Customer File, Account Number-Master Account, Account Number-Microfilm Account Number, Account Number-Microfilm SubAccount as Coded, Account Number-Microfilm SubAccount, Account Number-Old</li> </ul>
<b>MASTER CUSTODIAN_LOCATION</b>	<ul style="list-style-type: none"> <li>Search field created to enable enhanced search functionality</li> <li>Contains values from the following fields: Custodian-ESI, Scanned Custodian-Source/Location</li> </ul>
<b>MASTER DOCUMENT DATE</b>	<ul style="list-style-type: none"> <li>Search field created to enable enhanced search functionality</li> <li>Contains values from the following fields: Date-Begin Date Range, Date-Check Clear Date, Date-Date Created, Date-Date Received, Date-Date Sent, Date-End Date Range, Date-Microfilm Ledger Date, Date-Statement Date</li> </ul>
<b>MASTER FILE NAME</b>	<ul style="list-style-type: none"> <li>Search field created to enable enhanced search functionality</li> <li>Contains values from the following fields: File Name, File Name-Original</li> </ul>
<b>MASTER TITLE_DESCRIPTION</b>	<ul style="list-style-type: none"> <li>Search field created to enable enhanced search functionality</li> <li>Contains values from the following fields: Bank Document Description, Microfilm Document Name, Title</li> </ul>
Microfilm Document Name	<ul style="list-style-type: none"> <li>For microfilm only, the document name/title assigned as processing/coding time</li> </ul>
Original Bates Begin	<ul style="list-style-type: none"> <li>For items produced to Trustee, the original beginning Bates number assigned by the producing party <ul style="list-style-type: none"> <li>As noted, all items produced to the Trustee have been assigned new ("master") Bates numbers by the Trustee</li> </ul> </li> </ul>
Original Bates End	<ul style="list-style-type: none"> <li>For items produced to Trustee, the original ending Bates number assigned by the producing party <ul style="list-style-type: none"> <li>As noted above, all items produced to the Trustee have been assigned new ("master") Bates numbers by the Trustee</li> </ul> </li> </ul>
Producing Party	<ul style="list-style-type: none"> <li>For items produced by third parties, identifies the party that produced the item</li> </ul>
Relativity Image Count	<ul style="list-style-type: none"> <li>Provides page count information for a document, as indicated by the number of images associated with the database record</li> </ul>
Relativity Issue Path	<ul style="list-style-type: none"> <li>The Relativity Issue folder assigned to each document, provided to enable easier search functionality</li> </ul>
Relativity Native Time Zone	<ul style="list-style-type: none"> <li>System-generated numeric field, offsets the appearance of email headers dates and times as they appear in the image viewer; available as a search option and in search results list display</li> </ul>
Relativity Native Type	<ul style="list-style-type: none"> <li>System-generated field, displays the native file type as it was loaded into the database</li> </ul>
Scanned Custodian/Source Location	<ul style="list-style-type: none"> <li>Location from which the box and documents were collected</li> <li>Format for BLMIS scanned documents is LN, FN [of person associated with the documents] (BLMIS facility location from which the documents were collected) <ul style="list-style-type: none"> <li>EX: Madoff, Shana (Basement Area BA)</li> <li>EX: Madoff, Shana (18 Area SM)</li> <li>EX: Madoff, Shana (Queens Warehouse)</li> </ul> </li> </ul>
Source	<ul style="list-style-type: none"> <li>Provides abbreviated source information regarding publicly available documents posted in E-Data Room 1</li> </ul>
Source Description	<ul style="list-style-type: none"> <li>Provides source information regarding publicly available documents posted in E-Data Room 1 items</li> </ul>
Subject	<ul style="list-style-type: none"> <li>Subject field from processed electronically stored information</li> </ul>
Title	<ul style="list-style-type: none"> <li>Provides title or description information regarding selected items, generally based on file name</li> </ul>
To	<ul style="list-style-type: none"> <li>To field from processed electronically stored information</li> </ul>



**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION  
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT  
SECURITIES LLC,

Defendants.

In re:

BERNARD L. MADOFF,

Debtor.

IRVING H. PICARD, Trustee for the Liquidation of  
Bernard L. Madoff Investment Securities LLC,

Plaintiff,

v.

TRUST U/ART FOURTH O/W/O ISRAEL  
WILENITZ, EVELYN BEREZIN WILENITZ,  
individually, and as Trustee and Beneficiary of the  
Trust U/ART Fourth O/W/O Israel Wilenitz, and  
SARA SEIMS, as Trustee of the Trust U/ART Fourth  
O/W/O Israel Wilenitz,

Defendants.

Adv. Pro. No. 08-01789 (SMB)

SIPA Liquidation

(Substantively Consolidated)

Adv. Pro. No. 10-04995 (SMB)

**TRUSTEE IRVING H. PICARD'S RESPONSES AND OBJECTIONS TO  
DEFENDANTS' DOCUMENT DEMANDS AND INTERROGATORIES**

Irving H. Picard (the "Trustee"), as trustee for the liquidation of Bernard L. Madoff Investment Securities LLC ("BLMIS"), under the Securities Investor Protection Act, 15 U.S.C. §§ 78aaa-III ("SIPA"), and the estate of Bernard L. Madoff by and through the Trustee's counsel, Baker & Hostetler LLP, hereby provides the following Responses and Objections to the First Set of Interrogatories ("Interrogatory" or "Interrogatories") served by Defendants Trust U/ART Fourth O/W/O Israel Wilenitz, Evelyn Berezin Wilenitz, individually, and as Trustee and Beneficiary of the Trust U/ART Fourth O/W/O Israel Wilenitz, and Sara Seims, as Trustee of the Trust U/ART Fourth O/W/O Israel Wilenitz (collectively, the "Defendants") on March 8, 2016.

**OBJECTION TO DEFINITIONS**

1. The Trustee objects to the term "Identify" (with respect to persons) in Definition 1(c) as inconsistent with Local Rule 26.3(c)(3) of the United States District Court for the Southern District of New York and this Court, insofar as it purports to require the Trustee to identify "the relationship between such person and (i) the Responding Party, (ii) Madoff, and/or (iii) BLMIS." The Trustee will respond to Interrogatories containing "Identify" (with respect to persons) as it is defined by Local Rule 26.3(c)(3).

2. The Trustee objects to the term "Identify" (with respect to documents) in Definition 1(d) as inconsistent with Local Rule 26.3(c)(4) of the United States District Court for the Southern District of New York and this Court, insofar as it purports to require the Trustee to identify the "Bates-Stamp Number if said document has previously been produced or filed in E-Data Room." The Trustee will respond to Interrogatories containing "Identify" (with respect to documents) as it is defined by Local Rule 26.3(c)(4).



3. The Trustee objects to the term “Identify” in Definitions 7 and 8 as inconsistent with Local Rules 26.3(c)(3)-(4) of the United States District Court for the Southern District of New York and this Court. The Trustee will respond to Interrogatories containing “Identify” as it is defined by Local Rules 26.3(c)(3)-(4).

### **OBJECTION TO INSTRUCTIONS**

1. The Trustee will respond to these Document Demands and Interrogatories consistent with Rules 26, 33 and 34 of the Federal Rules of Civil Procedure, Rules 7026, 7033, and 7034 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), applicable Local Civil Rules of the United States District Court for the Southern District of New York and this Court (the “Local Rules”), and any applicable orders of the Court, including the Court’s June 6, 2011 Litigation Protective Order [ECF No. 4137] and October 17, 2013 Order on the Third-Party Data Rooms [ECF No. 5475] (the “Third-Party Data Room Order”).

### **SOURCES OF INFORMATION RELEVANT TO THE CLAIMS OR DEFENSES IN THE TRUSTEE’S POSSESSION, CUSTODY OR CONTROL**

1. Hard-copy documents from the offices of BLMIS, offsite storage used by BLMIS, and other locations (“Hard-Copy BLMIS Documents”).

2. Electronic documents obtained from among approximately 20,000 pieces of media from the offices of BLMIS, offsite storage used by BLMIS, and other locations (“BLMIS Electronic Documents” or “BLMIS ESI”).

3. Documents produced by third parties to the Trustee during his investigation or adversary proceedings (“Third-Party Documents”).

**I. BLMIS DOCUMENTS**

From the Hard-Copy BLMIS Documents and BLMIS ESI (collectively, “BLMIS Documents”), the Trustee created a searchable electronic database containing approximately 4.7 million Hard-Copy BLMIS Documents and 25 million BLMIS Electronic Documents (“the **BLMIS Searchable Database**”). Defendants do not have direct access to the BLMIS Searchable Database because it contains documents relating to thousands of customers, many of which are not relevant to this proceeding. Instead, the Trustee provides all Defendants in these proceedings with documents as described below:

**A. Proof of BLMIS’s Fraud and Insolvency:** The Trustee created E-Data Room 1 from documents in the BLMIS Searchable Database as well as some Third-Party Documents. E-Data Room 1 contains documents relevant to the issues of the fraud conducted at BLMIS and its insolvency, and includes documents relating to BLMIS operations, regulatory disclosures, and financial records. *See Appendix A* for a description of documents available to Defendants in E-Data Room 1.

**B. BLMIS Core Account Documents:** The Trustee identified and segregated BLMIS core account documents for all customers (“Core Account Documents”). These Core Account Documents include account opening agreements, correspondence to and from BLMIS, transfer and/or redemption requests, customer statements, Portfolio Management and/or Portfolio Management Transaction Reports, which contain transaction history, and other documents that were specific to each account, and/or the Trustee’s calculation of net equity of a particular BLMIS account. Collectively, the Core Account Documents and the Bank Transfer Documents represent the documents produced to the Defendants by the Trustee with his initial disclosures



(the “Initial Disclosure Documents”), on April 1, 2016. *See Appendix B* for a summary of the Core Account Documents produced. The Core Account Documents produced are for Defendants’ accounts, 1CM806 and 1CM837, and the accounts affecting the principal balance calculation of Defendants’ accounts, 1CM000, 1CM007, 1CM188, and 1CM807.

**C. Proof of Transfers:** In addition to the Core Account Documents relevant to transfers described above, the Trustee identified and segregated BLMIS bank account records that reflect transfers to customers. Collectively, the Core Account Documents and the Bank Transfer Documents represent the documents produced to the Defendants by the Trustee with his initial disclosures (the “Initial Disclosure Documents”), on April 1, 2016. *See Appendix C* for a summary of the Bank Transfer Documents produced.

**D. Other Documents:** The Trustee preserved the nearly 20,000 pieces of BLMIS ESI and millions of pages of BLMIS Hard-Copy Documents in his possession, but did not include all such documents in the BLMIS Searchable Database. The Trustee did not process or scan, for example, backup tapes believed to contain redundant data, some floppy disks or CDs, and broken media. In responding to discovery requests, the Trustee does not search for BLMIS documents outside of the BLMIS Searchable Database. The Trustee will produce additional BLMIS Documents (meaning other than those described in Paragraphs A and B) from the BLMIS Searchable Database provided that the parties agree to narrowly tailored case-specific search terms and parameters that target documents relevant to the claims or defenses and



proportional to the needs of the case in accordance with Federal Rule 26(b)(1). *See Appendix D* for a description of sources of documents in the BLMIS Searchable Database.<sup>1</sup>

## **II. THE SQL DATABASES**

Information contained in certain BLMIS Hard-Copy Documents, BLMIS ESI, and certain Third-Party Documents was processed and input into multiple Microsoft Structured Query Language (“SQL”) Server tables and databases (the “SQL Databases”). To the extent feasible, the underlying documents used to build the SQL Databases are contained in E-Data Room 1. Some or all of the data in the SQL Databases is responsive to most of the Interrogatories. SQL Databases are used by the Trustee’s experts and are available for production to any Defendants upon request. Use of the SQL Databases requires some technical expertise. *See Appendix E* for the sources of data loaded into the SQL Databases.

### **THE TRUSTEE’S OBJECTIONS**

1. **Materials Prepared Post-December 11, 2008:** The Trustee will not produce or log Documents prepared by and/or received by him, his counsel, his professionals and/or other agents from on or after December 11, 2008 that are not relevant and/or are protected by the attorney work product doctrine, the attorney-client privilege, and/or any other applicable privileges or protections (“Materials Prepared Post-December 11, 2008”).

2. **Redundant, Cumulative, and Marginally Relevant Documents:** The BLMIS Searchable Database may contain documents that are responsive to the Interrogatories

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<sup>1</sup> Certain defendants with proper credentials have direct access to millions of Third-Party Documents in the Trustee’s possession. These documents are governed by the Third-Party Data Room Order. Per that Order, the Third-Party Data Rooms are not available to Defendants in this proceeding.

but which are redundant, cumulative, or marginally relevant (for example, the Defendants' names or account numbers appear on a list of customer names or account numbers and there is no other unique information). The Trustee objects to the production of these Documents to the extent that such production is not proportionate to the needs of the case under Federal Rule 26(b)(1) ("Redundant, Cumulative, and Marginally Relevant Documents").

3. **Information Outside the Scope of Relevance:** The Trustee objects to the disclosure of any information or identification of any Documents outside the scope of relevance articulated in Federal Rule 26 and Section 4(G) of the Litigation Procedures Order ("Information Outside the Scope of Relevance").

### **RESPONSES TO DOCUMENT DEMANDS AND INTERROGATORIES**

#### **REQUEST NO. 1:**

List the name and address of every former BLMIS employee with whom you spoke about the meaning of entries on the customer statements and state the substance of what you questioned each person about and what that person told you. Produce all documents you reviewed with each such employee and all documents indicating what each person said.

#### **RESPONSE:**

The Trustee objects to this Interrogatory and Document Request because it calls for Materials Prepared Post-December 11, 2008. The Trustee further objects that it seeks Information Outside the Scope of Relevance because it calls for documents that relate to customers other than the *Wilenitz* Defendants, and such documents are not relevant to the claims or defenses or proportional to the needs of the *Wilenitz* case. For these reasons, the Trustee will



not respond to this Interrogatory and Document Request.

**REQUEST NO. 2:**

With respect to Madoff's and BLMIS' books and records, list every single factual error you found in those books and records including, without limitation, inconsistencies between the deposits and withdrawals shown on the customer statements and the cancelled checks and copies of cancelled checks in the Trustee's possession.

**RESPONSE:**

The Trustee objects to this Interrogatory on the grounds that BLMIS' "books and records" and "errors" is vague because the Interrogatory does not specify which books and records and what kind of "errors." The Trustee further objects that it seeks Information Outside the Scope of Relevance because it calls for documents that relate to customers other than the *Wilenitz* Defendants, and such documents are not relevant to the claims or defenses or proportional to the needs of the *Wilenitz* case. Notwithstanding that information about other BLMIS customers is not relevant to the *Wilenitz* case, the Trustee responds that customer statements and canceled checks are in E-Data Room 1. The Trustee states pursuant to Federal Rule 33(d)(1) that Defendants may determine the response to this request by comparing the customer statements with the checks and that the burden of ascertaining the information is substantially the same for either party.

With respect to the cash activity and principal transactions that affect the principal balance calculation (or net equity) in the *Wilenitz* accounts, the Trustee has not identified any errors. The documents that the Trustee produces that reflect these transactions are in the Initial Disclosure Documents. Further, nothing in the Initial Disclosure Documents indicates that the

*Wilenitz* Defendants ever brought any errors to the attention of BLMIS; nor have they pointed out any errors to the Trustee or set forth a specific, good-faith statement that they dispute any particular transaction. To the contrary, the *Wilenitz* Defendants have admitted in their claims submission to the Trustee that the BLMIS records match their personal bank records. See Appendix F, Defendants' June 26, 2009 claims submission.

**REQUEST NO. 3:**

List every single factual error asserted by any Madoff or BLMIS customer in their statements and produce all documents relating to such error.

**RESPONSE:**

Trustee's Response to this is the same as Trustee's Response to No. 2.

**REQUEST NO. 4:**

List every single "PW" entry on a customer statement where there is no documentary evidence that the customer requested to receive profit withdrawals and produce all documents relating thereto.

**RESPONSE:**

The Trustee objects to this Interrogatory on the grounds it seeks Information Outside the Scope of Relevance because it calls for information that relates to customers other than the *Wilenitz* Defendants, and such information is not relevant to the claims or defenses or proportional to the needs of the *Wilenitz* case. There are no PW entries on the customer statements for the *Wilenitz* accounts. There is one or more PW transactions in accounts affecting the net equity of the *Wilenitz* accounts and such customer statements were included in the Initial

Disclosure Production. The Trustee states pursuant to Federal Rule 33(d)(1) that Defendants may determine the response to this request by reviewing the Initial Disclosure Production and that the burden of ascertaining the information is substantially the same for either party. Notwithstanding that information about other BLMIS customers is not relevant to the *Wilenitz* case, the Trustee will produce a list of PW transactions that indicates whether the transaction reconciles to BLMIS bank records, customer files, or documents produced to the Trustee. This list was made available in connection with the Trustee's Motion Affirming Treatment of Profit Withdrawal Transactions, ECF Nos. 10660-10664, attached as Exhibit 7 to the Declaration of Lisa M. Collura, ECF No. 10664.

**REQUEST NO. 5:**

If you contend that Madoff's and BLMIS' customer statements were not "riddled with fraud" with respect to the deposits and withdrawals, produce all reports and documents on which you base that conclusion.

**RESPONSE:**

The Trustee objects to this Interrogatory because it violates Local Rule 33.3(c), which prohibits interrogatories that "seek the claims and contentions of the opposing party" until after the conclusion of other discovery unless the Court has ordered otherwise. This Interrogatory seeks information about the Trustee's contentions. Discovery is ongoing in *Wilenitz*. Defendants have not sought permission from the Court to ask contention interrogatories.

While the foregoing protects the Trustee from having to respond at all to this Interrogatory, the Trustee nonetheless states that he further objects to this Interrogatory and



Document Request to the extent that it calls for “reports and documents” that are Materials Prepared Post-December 11, 2008. The Trustee will not produce such materials.

The Trustee also objects to the unexplained use of “riddled with fraud” with respect to the customer statements, and has no way of knowing the source of that quote. As the Trustee explained during the meet and confer about this Interrogatory, it is the Trustee’s position that the cash activity reflected in the BLMIS customer statements is accurate and not fraudulent.

The Trustee also objects to the Interrogatory and Document Request because it seeks Information Outside the Scope of Relevance. Specifically, this Interrogatory and Document Request seeks information that is not relevant to the claims or defenses or proportional to the needs of the *Wilenitz* case given that it calls for information and documents relating to thousands of other BLMIS customers. The Trustee further responds that, with respect to the cash activity and principal transactions that affect the principal balance calculation (or net equity) in the *Wilenitz* accounts, the Trustee has not identified any fraud. Further, the *Wilenitz* Defendants have not pointed out any fraud in the *Wilenitz* customer statements to the Trustee; nor they have pointed out any fraud to the Trustee or set forth a specific, good-faith statement that they dispute any particular transaction. To the contrary, the *Wilenitz* Defendants have admitted in their claims submission to the Trustee that the BLMIS records match their personal bank records. *See* Appendix G, Defendants’ claims submission.

Finally, the Trustee objects to the extent this Interrogatory prematurely seeks to have the Trustee disclose expert materials well in advance of the deadline for disclosure of this information as provided in the Court-approved case management order entered in this adversary proceeding. The Trustee will supplement his productions with additional documents considered

by his experts, if any, following submission of their expert reports during expert discovery. The Trustee further notes that to the extent fact witness relied on by the Trustee may also qualify as expert witnesses pursuant to Federal Rule 26(a)(2)(C), the Trustee will identify such witnesses in expert discovery.

**REQUEST NO. 6:**

As of the date you respond to these interrogatories, list every customer whose allowed claim has not been paid in full and state the amount of that customer's allowed claim and the amount that customer has received to date. Produce all documents from which you derived your answer. If you take the position that you cannot reveal the names of the account holders, list the accounts by account number and indicate whether the account is (a) an individual; (b) a hedge fund; (c) a family investment fund; (d) an IRA account; or some other category.

**RESPONSE:**

The Trustee objects to this Interrogatory and Document Request because it seeks information that is not relevant to the claims or defenses or proportional to the needs of the *Wilenitz* case given that it calls for information relating to claimants other than *Wilenitz*. The Trustee responds specifically as to the *Wilenitz* Defendants, and states their claims have not been allowed.

**REQUEST NO. 7:**

With respect to your most recent distribution to allowed claimants, how much did you distribute in total and how much did you distribute to each allowed claimant. Produce all documents evidencing the distribution schedule including a list of the amount paid to each claimant, showing the name of each claimant. If you take the position that you cannot reveal the



names of the account holders, list the accounts by account number and indicate whether the account is (a) an individual; (b) a hedge fund; (c) a family investment fund; (d) an IRA account; or some other category.

**RESPONSE:**

The Trustee objects to this Interrogatory and Document Request seeks information that is not relevant to the claims or defenses or proportional to the needs of the *Wilenitz* case given that it calls for information that (i) is not relevant to the issue of whether the Trustee may avoid and recover the avoidable transfers from the *Wilenitz* Defendants and (ii) relates to hundreds of claimants other than the *Wilenitz* Defendants. The Trustee responds specifically as to the *Wilenitz* Defendants, and states their claims have not been allowed and, accordingly, no interim distribution was made to them. The Trustee further refers the Defendants to information regarding the claims process and interim distributions, located on the Trustee's website at [www.madofftrustee.com](http://www.madofftrustee.com).

**REQUEST (UNNUMBERED)**

List the name of every customer who sold an allowed claim to a claims purchaser, the amount paid to the customer by the claims purchaser, the allowed amount of the claim, and the date of the purchase. Produce all documents from which you derived your answer.

**RESPONSE:**

The Trustee's Response to this is the same as Trustee's Response to No. 7.

**REQUEST NO. 8:**

List every claims purchaser to whom you have made payment and state the amount, to date, that you have paid each claims purchaser.

**RESPONSE:**

The Trustee objects to this Interrogatory and Document Request because it seeks information that is not relevant to the claims or defenses or proportional to the needs of the *Wilenitz case*. The information called for by this Interrogatory has no bearing on whether the Trustee may avoid and recover the avoidable transfers in the *Wilenitz case*. For this reason, the Trustee will not respond to this Interrogatory and Document Request.

**REQUEST NO. 9:**

Provide a list of every allowed claim with the amount of the allowed claim. If you take the position that you cannot reveal the names of the account holders, list the accounts by account number and indicate whether the account is (a) an individual; (b) a hedge fund; (c) a family investment fund; (d) an IRA account; or some other category.

**RESPONSE:**

The Trustee's Response to this is the same as Trustee's Response to No. 7.

**REQUEST NO. 10:**

State the precise fee arrangement you have had with Baker & Hostetler LLP from inception of your appointment as Trustee. Produce the document which sets forth that compensation arrangement.

**RESPONSE:**

The Trustee states that, in light of the March 18, 2016 Order Implementing Court's March 17, 2016 Bench Ruling Granting Protective Order, the Trustee is not required to respond to Interrogatory No. 10. *See* Adv. Pro. No. 08-01789, Docket No. 12912.

**REQUEST NO. 11:**

State the precise amount you have received in compensation since joining Baker & Hostetler LLP in December 2008 through the date you respond to these interrogatories. Produce all documents from which you derived your answers.

**RESPONSE:**

The Trustee states that, in light of the March 18, 2016 Order Implementing Court's March 17, 2016 Bench Ruling Granting Protective Order, the Trustee is not required to respond to Interrogatory No. 11. *See* Adv. Pro. No. 08-01789, Docket No. 12912.

**REQUEST NO. 12:**

In the event that any other attorney at Baker & Hostetler LLP receives a percentage of the gross fee revenues relating to this proceeding other than you, state the name or names of such persons and the precise fee arrangement each of them has with Baker & Hostetler LLP Produce all documents from which you derived your answers.

**RESPONSE:**

The Trustee states that, in light of the March 18, 2016 Order Implementing Court's March 17, 2016 Bench Ruling Granting Protective Order, the Trustee is not required to respond to Interrogatory No. 12. *See* Adv. Pro. No. 08-01789, Docket No. 12912.

**REQUEST NO. 13:**

List the name, address and phone number of every BLMIS employee who worked in the market-making business and in the proprietary trading business as of January 1, 2008 and explain his/her function and compensation.



**RESPONSE:**

The Trustee objects to Interrogatory No. 13 to the extent it seeks Information Outside the Scope of Relevance. The Trustee nonetheless states that, approximately 4 million documents that relate to the operations of BLMIS are in E-Data Room. The purpose of E-Data Room 1, among others, was so that the Trustee could produce documents relating to the operations of BLMIS on a global basis. It is not proportional to the needs of the case in *Wilenitz* to respond to this Interrogatory and require the Trustee to undertake any additional burden when the Defendants have not requested access to the source of more than 4 million documents which includes lists of BLMIS employees. The Trustee directs the Defendants to MADTNN00081805 located in E-Data Room 1, which lists the persons employed by BLMIS, to the best of the Trustee's knowledge, for a time period including January 1, 2008. The Trustee also directs the Defendants to Bates No. FIDTAA0000166-FIDTAA0000325, located in E-Data Room 1, that contains additional information responsive to this request. In addition, attached as Exhibit A is a list of readily available employee addresses and phone numbers we were able to identify after a reasonable search. We make no representations as to the accuracy of any the contents of Exhibit A.

**REQUEST NO. 14:**

Explain the basis on which you determined that the Defendants have no net equity and produce the front and back of each deposit into and withdrawal from the Account and from any account which transferred funds into the Defendants' account.

**RESPONSE:**

In a meet and confer regarding these Interrogatories and Requests, defense counsel clarified that this Interrogatory should state, "produce the front and back of each check deposited

into and withdrawn from the Account and from any account which transferred funds into the Defendants' account."

The Trustee responds that the Trustee's expert calculated the principal balance by reviewing the Initial Disclosure Documents, which were produced to Defendants on April 1, 2016.

It is not proportional to the Wilenitz case for the Trustee to be required to produce the backs and fronts of every check deposited into and withdrawn from the Defendants' accounts and from any account which transferred funds into the Defendants' account when the Defendants have not set forth a specific, good-faith reason that the calculation is incorrect.

Finally, the Trustee objects to the extent this Interrogatory prematurely seeks to have the Trustee disclose expert materials well in advance of the deadline for disclosure of this information as provided in the Court-approved case management order entered in this adversary proceeding. The Trustee will supplement his productions with additional documents considered by his experts, if any, following submission of their expert reports during expert discovery. The Trustee further notes that to the extent fact witness relied on by the Trustee may also qualify as expert witnesses pursuant to Federal Rule 26(a)(2)(C), the Trustee will identify such witnesses in expert discovery.

**REQUEST NO. 15:**

Explain how you intend to establish that Madoff was insolvent in each year from 1960 – 2000 and produce all documents on which you will rely to establish insolvency for each of those years.

**RESPONSE:**

The Trustee responds that he intends to put forth an expert on the insolvency of BLMIS. The documents upon which the expert relies to establish insolvency are in E-Data Room 1.

The Trustee objects to the extent this Interrogatory prematurely seeks to have the Trustee disclose expert materials well in advance of the deadline for disclosure of this information as provided in the Court-approved case management order entered in this adversary proceeding. The Trustee will supplement his productions with additional documents considered by his experts, if any, following submission of their expert reports during expert discovery. The Trustee further notes that to the extent fact witness relied on by the Trustee may also qualify as expert witnesses pursuant to Federal Rule 26(a)(2)(C), the Trustee will identify such witnesses in expert discovery.

**REQUEST NO. 16:**

Provide the gross trading volume by both number of shares traded and total dollar volume for each year of Madoff's operation, broken down by (a) investment advisory business (b) proprietary trading business; and (c) market making business. Produce the documents on which you base your responses.

**RESPONSE:**

The Trustee objects to this Interrogatory because it violates Local Rule 33.3(c), which prohibits interrogatories that "seek the claims and contentions of the opposing party" until after the conclusion of other discovery unless the Court has ordered otherwise. This Interrogatory seeks information about the Trustee's contentions. Discovery is ongoing in Wilenitz. Defendants have not sought permission from the Court to ask contention interrogatories.



While the foregoing protects the Trustee from having to respond at all to this Interrogatory, the Trustee nonetheless states that there were no securities purchased by the investment advisory business unit, of which the *Wilenitz* Defendants were customers. With respect to the proprietary trading business and the market making business units, records from BLMIS and third parties, including the Depository and Trust Clearing Corporation (“DTCC”), which reflect trading activity by those business units of BLMIS, are in E-Data Room 1. The purpose of E-Data Room 1, among others, was to provide Defendants, including the *Wilenitz* Defendants, the documents upon which the Trustee relies to establish that no trades were being made by the investment advisory business unit and that no trades were being made by the market making and proprietary trading business unit on behalf of customers of the investment advisory business unit. It is not proportional to the needs of the case in *Wilenitz* to respond to this Interrogatory and Document Request and require the Trustee to undertake any additional burden when the Defendants have not requested access to the source of more than approximately 4 million responsive documents or articulated a specific reason as to whether and why the Defendants contend that BLMIS was not a fraudulent enterprise scheme or insolvent during the relevant time period.

Finally, the Trustee objects to the extent this Interrogatory prematurely seeks to have the Trustee disclose expert materials well in advance of the deadline for disclosure of this information as provided in the Court-approved case management order entered in this adversary proceeding. The Trustee intends to establish the insolvency of BLMIS through his experts. The Trustee will supplement his productions with additional documents considered by his experts, if any, following submission of their expert reports during expert discovery. The Trustee further notes that to the extent fact witness relied on by the Trustee may also qualify as expert witnesses



pursuant to Federal Rule 26(a)(2)(C), the Trustee will identify such witnesses in expert discovery.

**REQUEST NO. 17:**

Provide the number of employees who worked in each of the trading areas set forth in interrogatory # 17 for each year of Madoff's operations and produce the documents on which you base your responses.

**RESPONSE:**

The Trustee's Response to this is the same as Trustee's Response to No. 13.

**REQUEST NO. 18:**

For each security listed on the Defendants' account statements for each year from 1982 on, set forth the number of shares of the listed companies' stock that BLMIS held at that time; and, if the stock was specified as belonging to a particular customer, specify the customer and the number of shares shown on BLMIS' records as being owned by that customer. Produce the documents on which you base your responses.

**RESPONSE:**

The Trustee states pursuant to Federal Rule 33(d)(1) that Defendants may determine the response to this request for Defendants by comparing the DTCC records in E-Data Room 1 with the Initial Disclosure Documents and that the burden of ascertaining the information is substantially the same for either party.

**AS TO OBJECTIONS:**

Dated: April 8, 2016  
New York, New York

**BAKER & HOSTETLER LLP**

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*Attorneys for Irving H. Picard, Trustee for  
the Substantively Consolidated SIPA  
Liquidation of Bernard L. Madoff  
Investment Securities LLC and the Estate  
of Bernard L. Madoff*

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**VERIFICATION**

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STATE OF NEW YORK     )  
                                      )  
COUNTY OF NEW YORK    )

I, Irving H. Picard, as the Court-appointed Trustee of the Substantively Consolidated SIPA Liquidation of Bernard L. Madoff Investment Securities LLC and Bernard L. Madoff, hereby state that the foregoing Interrogatory Responses and Objections (“Responses”) have been assembled and prepared by my counsel. I sign for purposes of being bound by the foregoing Responses, but further state that as the Trustee, I have no personal knowledge of the facts and information herein. The Responses set forth herein, subject to inadvertent or undiscovered errors, are based on and therefore necessarily limited by the records and information still in existence, presently recollected, and/or thus far discovered in the course of the preparation of these Responses. Consequently, I reserve the right to make changes to the Responses if at any time it appears that an error or omission has been made therein or if additional or more accurate information becomes available.

Dated: April 8, 2016

  
\_\_\_\_\_  
Irving H. Picard

## **EXHIBIT A**

Adv. Pro. No. 10-04504, *Picard v. Dusek* - Supplemental Information in Response to Interrogatory No. 4

Last Name	First Name	Street Address	City	State	Zip Code	Phone Number 1	Phone Number 2
Abend	Reed	330 East 70th St - Apt 1G	New York	NY	10021	212-517-3162	(W) 203-838-4600 (H) 203-454-2411
Anderson	Semone	3115 Edson Ave	Bronx	NY	10469	718 320 1450	(c) 347 203-9987 (h) 718 320-145C
Arroyo	Richard	113 Adams Ave	Staten Island	NY	10306	718 987-0964	
Astuto	Toniann	65 Stuyvesant Ave	Staten Island	NY	10312	718-984-6978	212 221 5858 x 3146
Barutcuoglu	Zafer	328 West 11th Street Apt 3H	New York	NY	10014		
Batalion	Sally	787 East 5th St	Brooklyn	NY	11218	718-871-2263	212 980-7500
Bergstrom	Ase	335 112 Plymouth Road	West Palm Beac	FL	33405		
Berkowitz	Peter	18 Tall Timber Road	Mount Kisco	NY	10549		
Birch	Larry	6 Narrowbrook Court	Plainsboro	NJ	08536		
Bongiorno	Annette	78 Stone Hill Dr East	North Hills	NY	11030	516-365-0357	718 845-9163
Bonventre	Daniel	505 East 79th St - Apt 17G	New York	NY	10021	212-734-2343	212 734-3098
Bonventre	Daniel M.	505 East 79th St - Apt 17G	New York	NY	10021	212-734-2343	212 734-3098
Bonventre	John	5 24 East 79th Street Apt 2H	New York	NY	10075		
Brown	Clive	6 Gould Ave	Dobbs Ferry	NY	10522	914-693-8447	
Bruttomesso	Garrett	229 Chrystie Street Apt 516	New York	NY	10002		
Buchmueller	Elizabeth	525 East 13th Street Apt 4F	New York	NY	10009		
Burger-Joel	Amy	50 Sutton Pl South - Apt 11J	New York	NY	10022	212-308-2050	
Cacas Jr.	Eduardo	20 Linda Lane	Pearl River	NY	10965		
Camvycis	Thomas	85 East End Ave - Apt 3M	New York	NY	10028	212-794-4692	
Cardile	Robert	1041 Rector Road	Bridgewater	NJ	08807	908-725-9442	718-738-1260
Carlson	David	37 London Terr	New Rochelle	NY	10804	914-632-1888	(w) 914 721-2726
Carrero	David	360 West 43rd Street Apt 510f	New York	NY	10036		
Carroll	Richard	3682 Southwest Bimini Ct North	Palm City	FL	34990	561-288-0407	
Chen	Terrence	1793 Riverside Dr 2H	New York	NY	10034		
Clarke	Prunella	1372 New York Ave - Apt 2G	Brooklyn	NY	11203	718-826-3689	
Cohn	Leon	1616 59th St	Brooklyn	NY	11204	718-234-2919	718-234-2919
Colin	Stephani	208 Harris Rd DA-1	Bedford Hills	NY	10507	914-241-3639	914 232-5458,914 841-9462
Collado	Ralph	46-07 204th St	Bayside	NY	11361	718-423-1684	718-423-1684
Collins	Richard	100 Elgar Pl - Apt 21L	Bronx	NY	10475	718-320-4201	718-588-8303
Concepcion	Darlene	53 All Angels Hill Rd	Wappingers Fall	NY	12590	845-298-1570	
Connelly	Andrew	43 West Summit Ave	Midland Park	NJ	07432	201-444-9326	
Copersino	Albert	22 Manitou Road	Westport	CT	06880		
Cotellessa-Pitz	Enrica	91-11 107th Ave	Ozone Park	NY	11417	718-738-8636	
Coughlin	Edward	8 Rogers Ct	Midland Park	NJ	07432	201-445-9530	201 445-9530
Crupi	JoAnn	436 Grove St	Westfield	NJ	07090	908-317-9080	908 236-9001
De Lisi	Frederick	120 Carteret St	Staten Island	NY	10307	718-967-4129	WK:1-800-774-4333, Ext.8317 HM:718-967-4125
Delgado	Iris	84-38 90th Street	Woodhaven	NY	11421		
Di Maggio	Juliette	310 Maddock Street	West Palm Beac	FL	33405		
DiPascali	Frank	1400 Mountaintop Road	Bridgewater	NJ	08807		
Dirilo	Praxides	322 East 57th St	New York	NY	10022	212 755-2671	
Distenfeld	Eric	638 Sunderland Road	Teaneck	NJ	07666		
Dolinsky	Craig	2 Azalea Ct	East Brunswick	NJ	08816	732-390-1383	732-251-4300
Duffy	Daniel	213 Embree Ct	Westfield	NJ	10552	908-654-0334	908-654-0334
Eckhaus	Daniel	248 West 21st Street Apt 1c	New York	NY	10011		
Eisen	Barry	108 East 96th St Apt - 12G	New York	NY	10028	212-987-2195	
Esbenshade	Zi-Yah	107 East 88th St - Apt 5D	New York	NY	10028	212-534 3455	717 392 8734 - 646 279-6231
Falcone	Robert	52 Egbert Ave	Staten Island	NY	10310	718-720-5731	718 720-5125



Adv. Pro. No. 10-04504, *Picard v. Dusek* - Supplemental Information in Response to Interrogatory No. 4

Ferraro	Jeffrey	50-31 211 St	Bayside	NY	11364 718-224-1016	718 224-1016
Ferraro	Marc	175 Rockaway Ave	Garden City	NY	11530 516-294-0844	
Fleischmann	Barry	268 Kell Ave	Staten Island	NY	10314 718-494-0449	
Fleming	Junior	4155 Baychester Avenue	Bronx	NY	10466	
Flores	Enrique	152 Graham Ave	New York	NY	11206 718-387-4925	
Fong	Kevin	562 Blueberry Pl	Franklin Lakes	NJ	07417 201-848-7670	
Friedman	Steven	34 Old Mill Road	West Harrison	NY	10604	
Fuller	Tracey	567 Nostrand Avenue	Brooklyn	NY	11216	
Garcia	Vincent	1 Warwick Ct	River Edge	NJ	07661 201-488-9104	201 488-9104
Garcia	Patricio	15 East 35th Street	Bayonne	NJ	07002	
Gavlik	Margaret	100 Bradford Ave	Rye	NY	10580 914 698 6592	(C) 914 420-8545/(h) 914 835-4948
Glassman	Brett	245 East 63rd St - Apt 827	New York	NY	10021 212 223 0786	212 223 0786
Goldman	Mark	223 East 85th St - Apt 30	New York	NY	10028 212-472-5375	
Gross	Jason	1641 West 2nd St - 2nd Fl	Brooklyn	NY	10022 516-694-1866	
Gutzwiller	Mark	14 Franklin Avenue	Westport	CT	06880	
Hernrajani	Hareh	15 Tiffany Court	Old Bridge	NJ	08857	
Hooey	Rolland	80 Calvin A venue	Syosset	NY	11791	
Horwitz	Daniel	27 Stoner Ave	Great Neck	NY	11021 516-466-5971	516 466 5971
Hutchinson	Kenneth	355 Fifth St - 2nd Fl	Brooklyn	NY	11215 718-832-7379	
Imbruce	Gregory	93 Rockledge Drive	Stamford	CT	06903	
Jackson	Winifler	1220 Croes Ave - Apt 5D	Bronx	NY	10472 718-589-3027	718 515-6414
Jacobson	Jeffrey	30 West 61st St - Apt 18B	New York	NY	10023 212-582-0064	
Jimenez	Anthony	82-15 35th Ave - Apt 3F	Jackson Heights	NY	11372 718 457-0158	
Jones	Belle	80-35 Springfield Blvd - Apt 3G	Queens Village	NY	11427 718-468-3439	
Jones	Richard	801 Allwyn St	Baldwin Harbor	NY	11510 516-867-2926	516 532 7353
Jorgensen	George	9 Pippin Ln	Wappingers Fall	NY	12590 845-208-1105	845 298-1105
Kanning	Robert	37 Sutton Road	Ho Ho Kus	NJ	07423	
Kelly	John	31 Washington Mews	Portchester	NY	10573 914 934-1388	
Khan	Dorothy	166-10 Foch Blvd	Jamacia	NY	11434 718-527-8207	718 978-0442
King	Seon	537 East 85th St	Brooklyn	NY	11236 718-251-1096	
Konigsberg	Stephen	55 West 14th Street Apt 7N	New York	BY	10011	
Koster	Deborah	860 U.N. Plaza - Apt 15B	New York	NY	10017 212-750-5768	212 355-7159
Kugel	David	69 Charney Court	Manhasset	NY	11030 516-627-0411	516 627-0411
Kugel	Craig	21 Soundview Lane	Sands Point	NY	11050	
Lamb	Cheryl	4063C Palm Bay Cl	West Palm Beac	FL	33406 561-478-4806	
Lanier	Adam	522 West Webster Avenue	Roselle Park	NJ	07204	
Larsen	Jean	349 East 49th Street Apt 2P	New York	NY	10017	
Lenaghan	Jonathan	4705 Center Boulevard Apt 2513	Long Island City	NY	11109	
Lipkin	Eric	315 East Ridgewood Ave - Apt 1F	Ridgewood	NJ	07450 201-689-2260	561-495-8424
Lipkin	Irwin	15408 Strathearn Drive	Delray Beach	FL	33446	
Lorenzo	Andrew	1303 East 52nd St	Brooklyn	NY	11234 718 444-2190	
Madoff	Shana	420 East 54th St - Apt 33 A	New York	NY	10022 212-317-1448	212 230 2424, 212 246 3898 (Maria 646 752 4191)
Madoff	Andrew	400 East 84th Street Apt 36 B	New York	NY	10028	
Madoff	Peter	34 Pheasant Run	Old Westbury	NY	11568	
Madoff	Marion	34 Pheasant Run	Old Westbury	NY	11568	
Madoff	Mark	158 Mercer Street	New York	NY	10012	
Magnus	Dumarsais	217-16 Hempstead Ave	Queens Village	NY	11429 718-776-2735	
Marasa	Gaetano	67 Marianne St	Staten Island	NY	10302 718-948-4178	718 984-7782

Adv. Pro. No. 10-04504, *Picard v. Dusek* - Supplemental Information in Response to Interrogatory No. 4

Mastrangelo	Ralph	277 Leverett Ave	Staten Island	NY	10308 718-356-2356	(H) 718 356-2356/(I) 212 306-4736
Mayer	Leonard	45 Sutton Pl South - Apt 3F	New York	NY	10022 212-688-8429	212-688-8429
McDonald	Christopher	8 Second Avenue	Ossining	NY	10562	
McGuire	Kevin	29 Wyckoff Street	Brooklyn	NY	11201	
McMahon	Robert	34 Prall Road	Hillsborough	NJ	08844	
Mehta	Neilay	225 Columbus Avenue Apt 4E	New York	NY	10023	
Moy	Peter	163 Hurlbert St	Staten Island	NY	10305 718-980-4293	718-980-4293
Mui	Alethea	175-19 68th Ave	Fresh Meadows	NY	11365 718-460-2189	212 403-1516/(b) 917 878-879C
Murray	Damien	1226 Intervale Ave at 169th St	Bronx	NY	10459 718-617-1375	
Nabile	Walid	121 Russell St	Staten Island	NY	10308 718 227-0914	718 227-0914
Nano	Glenn	17 5 East 2nd Street Apt 4D	New York	NY	10009	
Nasi	William	153-34 59 Ave	Flushing	NY	11355 718-461-2146	
Noer	Martin	39-52 44th Street	Sunnyside	NY	11104	
Nunez	Rafael	35-63 88th St - Apt 2L	Jackson Heights	NY	11372 718-898-8533	718 205-2476
O'Hara	Jerome	94 Scarcliffe Dr	Malverne	NY	11565 516-887-0705	516 227-0700
Oritz	Magdalena	37 Irving St	Jersey City	NJ	07307 201-963-6267	201 536-0577
O'Toole	Elizabeth	347 Court Street	Brooklyn	NY	11231	
Padala	Matthew	207 East 74th Street Apt 5A	New York	NY	10021	
Pagan	Rafael	2323 Cambreleng Avenue	New York	NY	10458	
Pechatnikov	Yefim	46 Oceanside A venue	Staten Island	NY	10305	
Pennachio	Daniel	19 Eleventh St	Carle Place	NY	11514 516-333-7972	Parents Phone (516-775-8627)
Perez	George	5 Horizon Rd - Apt 2804	Fort Lee	NJ	07024 201-224-9329	718 665-7209
Perez	Raul	155 W 68th St - Apt 1617	New York	NY	10023 212 769-2517	212-769-2517
Persaud	Sharda	93-31 205th Street	Hollis	NY	11423	
Reardon	Erin	21 Wirt Ave	Staten Island	NY	10309 718-948-5156	718 948-3719
Rosenberger	Jamie	40 Harrison Street 32B	New York	NY	10013	
Sanchez	Frankie	111-32 66th Avenue Apt 1B	Forest Hills	NY	11375	
Scharlop	Benjamin	152-28 Melbourne Ave - Apt 232	Flushing	NY	11367 718-263-7795	516-482-2726
Schwartz	Robert	3278 Amelia Dr	Mohegan Lake	NY	10547 914-245-5420	914 245-5420
Sembo	Sharda	185-01 Liberty Ave	St Albans	NY	11412 718-454-4435	
Shapiro	Stanley	983 Park Avenue	New York	NY	10028	
Shaps	Ryan	242 Coverly Avenue	Staten Island	NY	10301	
Sharr	Henry	2424 East 11th St - Apt 2B	Brooklyn	NY	11235 718-646-5181	
Shaw	Christopher	421 Hudson Street Apt 718	New York	NY	10014	
Shen	Hong	820 Cricket Ln	Woodbridge	NJ	07095 732-855-1743	908 755-8137
Sheredos	Robert	906 West Meadow Drive	Bound Brook	NJ	08805	
Sibbley	Lebert	601 East 19th St - Apt 4D	Brooklyn	NY	11226 718-434-4740	
Sibbley	Errol	227 West 2nd Street	Mount Vernon	NY	10550	
Sobel	Richard	19 Clover Lane	Westport	CT	06880	
Solomon	Elaine	500 East 77th St - Apt 416	New York	NY	10162 212-772-7035	212 772-7035
Sondike	Brett	418 Oceanfront	Long Beach	NY	11561 516-431-3666	(W) 212 213-7916
Squillari	Eleanor	594 Davis Ave	Staten Island	NY	10310 9718-420-4725	212-902-2212 Lawrence work
Sroka	Heath	30 I East 66th Street Apt 3M	New York	NY	10021	
Stahl	Richard	16 Cliff Ave	Darien	CT	06820 203-662-1112	203 662-1112
Stampfli	Joshua	72 Hillcrest Ave	Manhasset	NY	11030 516-869-5822	
Suazo	Joseph	415 Ridgefield Rd	Hauppauge	NY	11788 631-265-2514	631-265 2514 or 516 742-4992
Sullivan	Stefanie	175 West 87th St - Apt 19F	New York	NY	10024 212-873-8460	203- 966-4395
Sutton	Kurt	315 East 86th Street Apt 17JE	New York	NY	10028	



Adv. Pro. No. 10-04504, *Picard v. Dusek* - Supplemental Information in Response to Interrogatory No. 4

Taratunio	Debi	180 Ardmore Ave	Staten Island	NY	10314 718-698-4946	
Tiletnick	Peter	77-15 113th Street Apt 30	Forest Hills	NY	11375	
Tiletnick	Walter	440 East 13th St	New York	NY	11009 212-677-6737	
Torres	Elvis	79-17 153rd Avenue	Howard Beach	New York	11414 718-848-7023	
Tringali	Barbara	1807 West 7th St	Brooklyn	NY	11223 718-376-4054	
Vicinelli	Paolo	15 Dante Street	Larchmont	NY	10538	
Voigt	Hendrick	1 Independence Court Apt 611N	Hoboken	NJ	07030	
Ward	Laurence	310 East 46th St - Apt 12L	New York	NY	10017 212-972-9847	212 972 9847
Warrin	Christopher	96 East River Road	Rumson	NJ	07760	
Watkins	Michella	1589 Unionport Rd - Apt 7H	Bronx	NY	10462 718-863-8334	803-289-1259
Weber	Robert	406 Tarrytown Ave	Staten Island	NY	10306 718-987-2585	718 980-9793
Westhuis	Kathryn	531 East 20th Street Apt 3D	New York	NY	10010	
Wharton	Sean-Louis	66 Fox Road Unit 4B	Edison	NJ	08817	
White	Charlene	39 Morton St	Garnerville	NY	10923 845-429-1186	201 538-3243
Wiener	Charles	28 Chatham Pl	Dix Hills	NY	11746 631-499-8965 (h)	516-228-8766
Wong	William	725 Jefferson Street Unit 2	Hoboken	NJ	07030	
Yeh	Richard	200 East 5 8th Street Apt 14J	New York	NY	10022	
Yelsey	Neil	1 Cliff Pl	Pelham Manor	NY	10803 914-738-2520	
Zachar	Ned	372 Guard Hill Road	Bedford	NY	10506	
Zheng	Xing	18 Cornell Drive	Great Neck	NY	11020	

**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing was served this 8<sup>th</sup> day of April, 2016 by electronic and certified mail upon the following:

CHAITMAN LLP  
Helen Davis Chaitman  
465 Park Avenue  
New York, NY 10022

Email: [hchaitman@chaitmanllp.com](mailto:hchaitman@chaitmanllp.com)

/s/ George Klidonas  
*An Attorney for Irving H. Picard, Trustee  
for the Substantively Consolidated SIPA  
Liquidation of Bernard L. Madoff Investment  
Securities LLC and the Estate of Bernard L.  
Madoff*

**BakerHostetler**

**Baker & Hostetler LLP**

45 Rockefeller Plaza  
New York, NY 10111

T 212.589.4200  
F 212.589.4201  
www.bakerlaw.com

September 26, 2016

Edward J. Jacobs  
direct dial: 212.589.4674  
ejacobs@bakerlaw.com

**VIA FED-EX AND E-MAIL (hchaitman@chaitmanllp.com)**

Helen Davis Chaitman  
Chaitman LLP  
465 Park Avenue  
New York, NY 10022

*Re: Picard v. Trust U/ART Fourth o/w/o Israel Wilenitz, Adv. Pro. No. 10-04995  
(SMB)*

Dear Helen:

As you know, we represent the Trustee in connection with the above-referenced adversary proceeding. In light of the ongoing dispute with respect to the Trustee's Responses and Objections (the "Responses") to the Defendant's Document Demands and Interrogatories (the "Requests"), attached please find an early production of the *Expert Report of Bruce G. Dubinsky MST, CPA, CFE, CVA, CFF, MAFF* (the "Dubinsky Report"). While the Trustee makes this production in a good faith effort to settle the ongoing dispute related to the Trustee's Responses, the Trustee does not waive his objection that production of the report is premature under the operative Case Management Order. Nor does the Trustee consent to making Mr. Dubinsky or any of the Trustee's other testifying experts available for deposition prior to the opening of expert discovery.

As you know from previous productions of the Dubinsky Report in other adversary proceedings in which you serve as defense counsel, the Trustee offers the Dubinsky Report to establish, *inter alia*, that BLMIS operated a fraud through its Investment Advisory business in which Defendant held the accounts that are the subject of this avoidance action, and that BLMIS was insolvent at all relevant times. Documents that Mr. Dubinsky considered in connection with forming his opinions in the Dubinsky

Atlanta Chicago Cincinnati Cleveland Columbus Costa Mesa Denver  
Houston Los Angeles New York Orlando Philadelphia Seattle Washington, DC

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Report are identified in appendices to his report, and the vast majority of these documents are available to you in E-Data Room 1 (the “Data Room”). The Data Room was disclosed to you in the Trustee’s Initial Disclosures on December 21, 2015.

Notwithstanding the fact that we have already provided you with (i) a manual that describes the Data Room in significant detail and (ii) Appendix A to the Trustee’s Responses, which contains an additional high-level description of the Data Room’s contents, what follows is another detailed description of the Data Room’s structure, organization, and contents, which we are providing to you in an effort to make your navigation of the Data Room as easy and straightforward as possible. Though this is not a comprehensive description of all of the approximately four million documents contained in the Data Room, it should nevertheless act as an additional road map for you to independently navigate the non-objectionable materials you seek through the Requests.

The structure of the description below mirrors the structure and presentation of the various folders and sub-folders within the Data Room itself. Specifically, the description below is organized by the three primary “issue trees” a Data Room user can navigate—**DATA**, **DOCUMENTS**, and **FINANCIALS**—as well the various sub-folders contained therein.

## **I. DATA**

The documents contained in the DATA issue tree contains data extracted from the data sources that BLMIS maintained over the decades. The DATA issue tree is further divided into two sub-folders—**Account Statements and Ledgers** and **StorQM 1099 Forms**—and contains copies of reports and some “near-native” data obtained from the data sources.

The **Account Statements and Ledgers** sub-folder contains customer statements, ledgers, and reports for BLMIS accounts, which are further organized into sub-folders based on the data source from which the documents were uploaded to the Data Room—Microfilm, SETCHS17, STMTPro, or StorQM. To the extent your Requests seek information contained in the customer statements of accountholders other than the defendant in this adversary proceeding, that information is contained in this sub-folder.

The **Microfilm** sub-folder contains customer statements and ledgers from 1978 through November 1995. Before implementing the AS400 system in the 1990s, BLMIS used predecessor systems (*e.g.*, IBM System 36) to generate account statements, and microfilm was used as a storage medium that were generated by these systems. Thus, the statements in this sub-folder were retrieved from the processed microfilm reels. Generally, each reel contained labeling that gave an indication of what types of reports were contained on the reel. Using the label information, and also through an actual review of thousands of reels by the Trustee’s experts, a subset of the microfilm reels and the reports contained therein were identified for processing and Bates numbering. Customer account statements and other reports related to customer accounts identified on

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Page 3

the microfilm reels are available in this folder.

The **SETCSH17** sub-folder contains SETCSH17 reports generated from BLMIS monthly backup tapes containing the SETCSH17 table. SETCSH17 (also referred to as “Settled Cash”) is a data table maintained in the House 17 AS400 that contains transactional customer activity used for generation of customer account statements. BLMIS archived this table on a monthly basis, purging the transactional data from the AS400 system after archive in order to preserve storage space. The SETCSH17 tables maintained on backup tapes were identified and restored. The SETCSH17 reports in this sub-folder are presented in PDF format and contain all transactions for the applicable account number, organized by month. The MS Excel files that were prepared from the extracted SETCSH17 tables are also available in this folder.

The **STMTPPro** sub-folder contains customer statements created using the StatementPro (“STMTPPro”) system from 1996 onward. STMTPPro is a proprietary AS400 add-on application developed by BLMIS programmers and was designed to create BLMIS customer statements outside the normal monthly processing of customer statements. Restored customer statements using the custom STMTPPro program are available in this sub-folder. Many of the STMTPPro tapes were stored with paper indices (“tape wrappers”) that provide selected information such as dates and account numbers. To the extent available, copies of the scanned tape wrappers are located in this folder.

The **StorQM** sub-folder contains customer statements created using the StorQM application on the AS400, which is a report-writing application used to generate various reports. The customer statements available in this folder are from December 1995 through November 2008. Please note that the processed StorQM reports in the Data Room were generated in “native-like” format and do not contain the custom StorQM “overlay” that appeared on the statements received by BLMIS customers.

The separate **StorQM 1099 Forms** sub-folder contains the IRS 1099 forms that were generated using the StorQM application. As with the customer statements, the documents available in this folder are from December 1995 through November 2008.

## **II. DOCUMENTS**

The DOCUMENTS issue tree contains electronic copies of hard copy documents collected from BLMIS facilities or obtained from third parties. These documents are organized by source, then by type of document/data. The bulk of the information responsive to your specific Requests seeking information related to BLMIS’s purported trading activities and its insolvency is contained in this section. The sub-folders and specific documents contained therein include:

- **BLMIS Documents and Work Papers:** This sub-folder includes various documents, notes, and papers created and maintained by BLMIS throughout its



Helen Davis Chaitman  
September 26, 2016  
Page 4

existence, including all pages from 21 of the spiral-bound notebooks used by BLMIS employees to track cash-in and cash-out transactions. This sub-folder further includes documents related to BLMIS's liquidity timeline, including letters from Dan Bonventre and Enrica Cotellessa-Pitz regarding loans to BLMIS using a JPMorgan Chase account as collateral.

- **BLMIS Operational Documents:** This sub-folder includes selected documents related to BLMIS's corporate structure and related organizational activities.
- **FINRA:** This sub-folder includes various documents related to FINRA, including BLMIS quarterly FOCUS Reports from 1983 through 2007, as well as accompanying data for the reports and audit materials provided by FINRA from the late 1990s onward, which further include FINRA questionnaires and document requests completed by BLMIS.
- **MSIL Documents and Work Papers:** This sub-folder includes various records regarding Madoff Securities International Limited, including corporate structure and organizational documents, shareholder resolutions, financial statements, and tax returns.
- **Other Public Documents:** This sub-folder contains certain publicly available documents provided for convenience of counsel. Documents include selected court filings from the criminal proceedings and/or trials of BLMIS employees and others.
- **Other Third Party Documents:** This sub-folder contains additional documents obtained from third parties that relate to BLMIS's purported trading activities, including information about specific transactions. The sub-folders are organized by the following sources:
  - **BATS Exchange:** contains documents produced by BATS Exchange Inc., including documents related to trading transactions and activity.
  - **Chicago Board of Options Exchange:** contains documents produced by the Chicago Board of Options Exchange, including documents related to trading transactions and activity.
  - **Chicago Mercantile Exchange:** contains documents produced by the Chicago Mercantile Exchange, including documents related to trading transactions and activity.
  - **Clearstream Banking SA:** contains documents produced by Clearstream Banking SA, including documents related to trading transactions and activity.

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- **Daily Stock Records (DSR):** contains various historical stock records, including pages from the New York Stock Exchange Daily Stock Price Record.
- **DTCC:** contains various records related to the Depository Trust and Clearing Corporation, including BLMIS's records from an account maintained with the DTCC, reports, statements, notices, confirmations, and other documents related to BLMIS trading activity through the Proprietary Trading and Market Making business units; also includes documents obtained from the leased DTCC terminal at BLMIS.
- **FAZ:** contains pages from FAZ newspaper reflecting trading activity.
- **Friehling & Horowitz:** contains various records related to purported accounting services provided by Friehling & Horowitz for BLMIS.
- **Interactive Brokers:** contains documents produced by Interactive Brokers LLC's in response to a subpoena, including various documents related to trading transactions and activity.
- **Knight Capital Group:** contains documents produced by Knight Capital Group Inc. in response to a subpoena, including various documents related to trading transactions and activity.
- **London Times:** contains pages from London Times related to local trading activity.
- **OCC:** contains documents produced by Options Clearing Corporation in response to subpoena, including various documents related to trading transactions and activity; Madoff Position Summary Reports.
- **Other:** contains documents produced by other third parties, primarily law firms that provided services to BLMIS.
- **SEC:** This sub-folder contains SEC-related materials, including publicly available documents and certain documents received from the SEC. The documents received from the SEC include certain filings made by BLMIS, including ADV forms and year-end filings.
- **Trustee Documents:** This sub-folder contains certain documents and items prepared or filed by the Madoff Trustee or his designees, including selected complaints, Trustee interim reports, and so forth.

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### **III. FINANCIALS**

The FINANCIALS issue tree contains documents obtained from various third-party institutions related to the financial condition of BLMIS and MSIL. As with the DATA and DOCUMENTS issue trees described above, there are numerous sub-folders labeled according to document source. Generally, the documents contained in these sub-folders are account statements, reports, cancelled checks, and related documents for accounts held by BLMIS or MSIL. The name of the specific entity is reflected in the sub-folder label, and the documents are organized into account-specific sub-folders.

The Data Room's search functionality can be a particularly useful method of navigating the FINANCIALS issue tree. In order to search, simply press the magnifying glass at the bottom of the window, next to the Field Tree. From there, you will be able to create a "New Search" and select certain search fields from the Conditions list. There are numerous fields that a user can search, such as Master Account Number, Master Document Date, Master File Name and Master Title Description. These fields consolidate 'like' fields for ease of searching, and when used, the search features will help you conduct more targeted and narrowed reviews of the Data Room's materials. Other usable fields and related descriptions can be found at the end of the User Manual.

We trust that the foregoing description will aid in your navigation of the materials contained in the Data Room, and once you review the materials contained therein, perhaps obviate or at least narrow the need for motion practice on the Requests. As you can see, the Data Room contains all of the non-objectionable materials you seek in the Requests, particularly those materials relating to BLMIS's purported legitimate trading activity, as well as its fraud and insolvency.

Sincerely,

/s/ Edward J. Jacobs

Edward J. Jacobs

Enclosures

Page 1

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

-----)  
In re: ) SIPA LIQUIDATION  
)  
BERNARD MADOFF INVESTMENT ) No. 08-01789 (SMB)  
SECURITIES LLC, )  
)  
Debtor. ) (Substantively  
) Consolidated)  
-----)

In re: )  
)  
BERNARD L. MADOFF, )  
)  
Debtor. )  
-----)  
IRVING H. PICARD, Trustee for )  
the Liquidation of Bernard L. )  
Madoff Investment Securities )  
LLC, )  
) Adv. Pro. No.  
Plaintiff, ) 10-04995 (SMB)  
)  
v. )  
)

TRUST U/ART FOURTH O/W/O )  
ISRAEL WILENITZ, )  
)  
EVELYN BEREZIN WILENITZ, )  
individually, and as Trustee )  
and Beneficiary of the Trust )  
U/ART Fourth O/W/O Israel )  
Wilenitz, )  
)  
SARA SEIMS, as Trustee of the )  
Trust U/ART Fourth O/W/O )  
Israel Wilenitz, )  
)  
Defendants. )  
-----)

(CAPTION CONTINUED ON THE NEXT PAGE)

1 -----)  
 IRVING H. PICARD, Trustee for )  
 2 the Liquidation of Bernard L. )  
 Madoff Investment Securities )  
 3 LLC, )  
 ) Adv. Pro. No.  
 4 Plaintiff, ) 10-04818 (SMB)  
 )  
 5 v. )  
 )  
 6 TOBY HARWOOD, )  
 )  
 7 Defendant. )  
 -----)  
 8 IRVING H. PICARD, Trustee for )  
 the Liquidation of Bernard L. )  
 9 Madoff Investment Securities )  
 LLC, )  
 10 ) Adv. Pro. No.  
 Plaintiff, ) 10-04914 (SMB)  
 11 )  
 v. )  
 12 )  
 EDYNE GORDON, in her capacity )  
 13 as the executrix and primary )  
 beneficiary of the estate of )  
 14 Allen Gordon, )  
 )  
 15 Defendant. )  
 -----)  
 16 IRVING H. PICARD, Trustee for )  
 the Liquidation of Bernard L. )  
 17 Madoff Investment Securities )  
 LLC, )  
 18 ) Adv. Pro. No.  
 Plaintiff, ) 10-04826 (SMB)  
 19 )  
 v. )  
 20 )  
 ESTATE OF BOYER PALMER, DIANE )  
 21 HOLMERS, in her capacity as )  
 Personal Representative of the )  
 22 Estate of Palmer, and BRUCE )  
 PALMER, in his capacity as )  
 23 Personal Representative of the )  
 Estate of Boyer Palmer, )  
 24 )  
 Defendant. )  
 25 -----)



1 -----)  
 IRVING H. PICARD, Trustee for )  
 2 the Liquidation of Bernard L. )  
 Madoff Investment Securities )  
 3 LLC, )  
 ) Adv. Pro. No.  
 4 Plaintiff, ) 10-04644 (SMB)  
 )  
 5 v. )  
 )  
 6 RUSSELL L. DUSEK, )  
 )  
 7 Defendant. )  
 -----)  
 8 IRVING H. PICARD, Trustee for )  
 the Liquidation of Bernard L. )  
 9 Madoff Investment Securities )  
 LLC, )  
 10 ) Adv. Pro. No.  
 Plaintiff, ) 10-04541 (SMB)  
 11 )  
 12 v. )  
 )  
 KENNETH W. PERLMAN; FELICE J. )  
 13 PERLMAN; and SANFORD S. )  
 PERLMAN, )  
 14 )  
 Defendant. )  
 15 -----)  
 IRVING H. PICARD, Trustee for )  
 16 the Liquidation of Bernard L. )  
 Madoff Investment Securities )  
 17 LLC, )  
 ) Adv. Pro. No.  
 18 Plaintiff, ) 10-04728 (SMB)  
 )  
 19 v. )  
 )  
 20 BRUNO DIGIULIAN, )  
 )  
 21 Defendant. )  
 -----)

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23

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25

1 -----)  
 IRVING H. PICARD, Trustee for )  
 2 the Substantively Consolidated )  
 SIPA Liquidation of Bernard L. )  
 3 Madoff Investment Securities )  
 LLC and Bernard L. Madoff, )  
 4 ) Adv. Pro. No.  
 Plaintiff, ) 10-04905 (SMB)  
 5 )  
 v. )  
 6 )  
 TRAIN KLAN, a Partnership; )  
 7 FELICE T. LONDA, in her )  
 capacity as a Partner in Train )  
 8 Klan; CLAUDIA HELMIG, in her )  
 capacity as a Partner in Train )  
 9 Klan; TIMOTHY LANDRES, in his )  
 capacity as a Partner in Train )  
 10 Klan; PETER LONDA, in his )  
 capacity as a Partner in Train )  
 11 Klan; TIMOTHY HELMIG, in his )  
 capacity as a Partner in Train )  
 12 Klan; and WENDY LANDRES, in her )  
 capacity as a Partner in Train )  
 13 Klan, )  
 )  
 14 Defendants. )  
 -----)  
 15 IRVING H. PICARD, Trustee for )  
 the Substantively Consolidated )  
 16 SIPA Liquidation of Bernard L. )  
 Madoff Investment Securities )  
 17 LLC and Bernard L. Madoff, )  
 ) Adv. Pro. No.  
 18 Plaintiff, ) 10-004621 (SMB)  
 )  
 19 v. )  
 )  
 20 DONALD A. BENJAMIN, )  
 )  
 21 Defendant. )  
 -----)  
 22  
 23  
 24  
 25

1 TRUSTEE'S MOTION TO COMPEL DISCOVERY IN THE  
2 THREE ADVERSARY PROCEEDINGS:

- 3  
4 i) Picard v. Benjamin, Adv. Pro. No. 10-04621  
5 ii) Picard v. DiGiulian, Adv. Pro. No. 10-04728  
6 iii) Picard v. Train Klan, Adv. Pro. No. 10-04905

7 -and-

8 CHAITMAN LLP'S MOTION TO COMPEL DISCOVERY AND THE  
9 TRUSTEE'S CROSS-MOTION FOR A PROTECTIVE ORDER IN ONE  
10 ADVERSARY PROCEEDING, PICARD V. WILENITZ, ADV. PRO.  
11 NO. 10-04995

12 -and-

13 CHAITMAN LLP'S MOTION FOR PROTECTIVE ORDER AND QUASH  
14 TRUSTEE'S DEPOSITIONS IN THE FOLLOWING ADVERSARY SIX  
15 PROCEEDINGS:

- 16  
17 i) Picard v. Perlman, Adv. Pro. No. 10-0454  
18 ii) Picard v. Gordon, Adv. Pro. No. 10-04914  
19 iii) Picard v. Harwood, Adv. Pro. No. 10-04818  
20 iv) Picard v. Estate of Palmer, Adv. Pro. No.  
21 10-04826  
22 v) Picard v. DiGiulian, Adv. Pro. No. 10-04728  
23 vi) Picard v. Dusek, Adv. Pro. No. 10-04644

24 TRANSCRIPT OF PROCEEDINGS

25 in the above-titled action, held on Tuesday,  
December 13, 2016, at JAMS, 680 Eighth Avenue, New  
York, New York, commencing at approximately 10:00  
a.m., before Eileen Mulvenna, CSR/RMR/CRR, Certified  
Shorthand Reporter, Registered Merit Reporter,  
Certified Realtime Reporter, and Notary Public of  
the State of New York.

1 B E F O R E:

2

HON. FRANK MAAS (RET.), Arbitrator  
620 Eighth Avenue  
34th Floor  
New York, New York 10018  
fmaas@jamsadr.com

5

6

A P P E A R A N C E S:

7

8

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Attorneys for the Trustee  
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Houston, Texas 77002-6111  
BY: DEAN HUNT, ESQ.  
dhunt@bakerlaw.com  
MARIE L. CARLISLE, ESQ.  
marie.carlisle@bakerlaw.com

13

-and-

14

BAKER HOSTETLER LLP  
45 Rockefeller Plaza  
14th Floor  
New York, New York 10111  
BY: EDWARD J. JACOBS, ESQ.  
edward.jacobs@bakerlaw.com

18

19

CHAITMAN LLP  
Attorneys for Defendants  
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New York, New York 10022  
BY: HELEN DAVID CHAITMAN, ESQ.  
hchaitman@chaitmanllp.com  
GREGORY M. DEXTER, ESQ.  
gdexter@chaitmanllp.com

24

25



1 THE ARBITRATOR: I thought we'd start  
2 with a couple of housekeeping matters.

3 When we spoke in the telephone  
4 conference call and implicit in Judge  
5 Bernstein's rulings, or I guess really  
6 explicit, is that the rulings I make will  
7 apply to the other adversary proceedings to  
8 which it's applicable.

9 But I assume that's something the two  
10 sides will try to work out amongst  
11 themselves?

12 MR. HUNT: Yes. I mean, I don't think  
13 we're willing to beat our head against a wall  
14 on things, but I think each of these cases  
15 have some nuances that are different. So  
16 there may be something that's easily  
17 translatable, but sort of depends on the  
18 issue, I think.

19 MS. CHAITMAN: But I actually -- this  
20 is something that I've tried to work out  
21 previously. I'm defending 92 of these  
22 actions.

23 THE ARBITRATOR: You just answered  
24 another question I had on the list. Go on.

25 MS. CHAITMAN: The thing is, it just

1 seems to me it's logical that if you rule  
2 that the trustee has to produce X document, I  
3 shouldn't have to make 92 applications for  
4 that.

5 My sense is that if the judge makes a  
6 ruling -- all of these cases are virtually  
7 identical in the -- the complaints are  
8 virtually identical. So why would one client  
9 be entitled to a certain kind of discovery  
10 and another wouldn't? I just think we could  
11 simplify this so much if we could apply your  
12 rulings to all of the outstanding cases that  
13 I have.

14 THE ARBITRATOR: Why don't we leave it  
15 as that would be a good thing to do. As we  
16 get deeper into this, assuming there is a  
17 deeper into this, we can try and work that  
18 out.

19 It struck me that there were areas  
20 like that. And I'm sure the trustee has a  
21 reason, but by way of example, there was a  
22 discussion before Judge Bernstein about the  
23 Dubinsky report having been served in  
24 Action A, but not Action B, although  
25 Ms. Chaitman is counsel in both A and B. And

1 I assume that is a function of scheduling  
2 issues. Is that --

3 MR. JACOBS: That's correct.

4 THE ARBITRATOR: Spell that out for  
5 me, if you could.

6 MR. JACOBS: Sure. Most of  
7 Ms. Chaitman's cases are either -- all of  
8 them have their own independent case  
9 management order. While there might be  
10 groups of them that are roughly proceeding  
11 together, they're all different.

12 So the expert disclosure dates differ  
13 for each of those matters. In the Wilenitz  
14 case, which is before you today, your Honor,  
15 we served the Dubinsky report early to try to  
16 avert some of the discovery disputes that  
17 we're having here.

18 And also Ms. Chaitman has received  
19 that report in the normal course of the offer  
20 and case management order in a number of  
21 other cases that aren't before you today.

22 The Dubinsky report at the moment  
23 hasn't changed and that -- there has been a  
24 revision, but not in any of Ms. Chaitman's  
25 cases. And for a number of years now, it's

1           been the same report.

2                   And there are additional reports that  
3           are defendant-specific, as Ms. Chaitman  
4           knows, that we served in each of the  
5           adversary proceedings. And those haven't  
6           been served yet because the offer and case  
7           management orders don't call for the  
8           disclosure of those experts yet.

9                   THE ARBITRATOR: Those are Collura --

10                  MR. JACOBS: And Greenblatt, correct.  
11           Both of those reports have aspects of sort of  
12           case law analysis, but they also apply that  
13           to the specific transfers at issue with  
14           respect to the specific defendants in each  
15           case.

16                  So Ms. Chaitman has seen those reports  
17           in a number of her cases, just not the  
18           Wilenz case or the others that are still in  
19           fact discovery today.

20                  THE ARBITRATOR: And I gather that  
21           some, but not all of the issues that relate  
22           to the individual Collura and Greenblatt  
23           reports will also be the subject of the  
24           omnibus profit withdrawal hearing that Judge  
25           Bernstein contemplates?



1 MR. JACOBS: Potentially if the issue  
2 with the proper withdrawal transactions is  
3 that there are certain transactions reflected  
4 on customers' statements that are being --  
5 the nature of which are being litigated right  
6 now in the claims proceeding you just  
7 referenced, some of the defendants in some of  
8 the cases have those type of transactions in  
9 their account. So that would be relevant in  
10 each of those adversary proceedings as well,  
11 but not all. So --

12 THE ARBITRATOR: Are you talking about  
13 inter-account transfers?

14 MR. JACOBS: No, I'm talking about --  
15 so the profit withdrawal -- the profit  
16 withdrawal in the trustee's contention was a  
17 purported dividend on a stock reflected in  
18 the customer statement, which was fraudulent,  
19 that resulted in an actual check going to the  
20 customer in cash.

21 So -- and Ms. Chaitman represents  
22 Mr. Blecker, who I believe is the customer  
23 whose claim was denied in our claims side of  
24 the case. And she --

25 You can correct me if I'm

1           misconstruing your argument.

2                       But some of the customers represented  
3           by Ms. Chaitman are arguing that, in fact,  
4           those profit withdrawal transactions did not  
5           result in checks or cash that went to the  
6           customer. So to that extent, that would be a  
7           challenge to our net equity calculation.

8                       So that's what's being litigated  
9           before Judge Bernstein in the profit  
10          withdrawal proceeding.

11                      MS. CHAITMAN: But not with respect to  
12          the claw-back defendants.

13                      MR. JACOBS: Well, it's an issue that  
14          may be relevant in discovery with the  
15          claw-back defendants to the extent you're  
16          challenging our calculation of net equity,  
17          and the PW transactions specifically are part  
18          of your challenge.

19                      THE ARBITRATOR: I had thought there  
20          was overlap, but you're telling me that  
21          there's less overlap than I thought there  
22          was, which is helpful to understand.

23                      MS. CHAITMAN: My understanding was  
24          that Judge Bernstein explicitly said we're  
25          not litigating the profit withdrawal

1 contentions of the claw-back defendants in  
2 the profit withdrawal litigation.

3 MR. JACOBS: That's correct. So right  
4 now, I agree, to avoid any confusion, the  
5 profit withdrawal issue is only being  
6 litigated in the claims proceeding. It's not  
7 part -- the adversary proceedings are -- the  
8 defendants in the adversary proceedings where  
9 that's an issue are not part of that  
10 proceeding.

11 So presumably those issues may --  
12 well, it will be -- we'll have to see how  
13 Judge Bernstein wants to deal with any ruling  
14 he'll issue on the claim side and its  
15 applicability to the adversary proceedings.

16 In my mind, obviously, any ruling that  
17 Judge Bernstein issues in any one of our  
18 cases, including a discovery issue or any  
19 ruling you may issue, if it's applicable to  
20 the same set of facts or circumstances in any  
21 other case, the trustee is going to follow  
22 it.

23 Where it's not applicable, because  
24 there are different circumstances or facts  
25 that would render it -- would render the

1 outcome of the application of that decision  
2 for that case inconsistent with the judge's  
3 analysis or theory and ruling in the prior  
4 proceeding, then we would argue it shouldn't  
5 apply.

6 So just backing up to your question,  
7 your Honor, about whether your rulings today  
8 should apply universally in all cases, we  
9 agree with Ms. Chaitman that where the facts  
10 and circumstances of other cases are  
11 identical, it absolutely should. Where they  
12 aren't, it shouldn't.

13 If either side can make a good-faith  
14 argument as to why it shouldn't apply -- and  
15 as I stated to Ms. Chaitman in many prior  
16 hearings before Judge Bernstein, after we  
17 have the benefit of your ruling, we're happy  
18 to meet and confer and enter into a  
19 stipulation as appropriate where we can agree  
20 as to the applicability of those rulings in  
21 her other cases to avoid unnecessary  
22 litigation of those same issues.

23 I think that should solve all of our  
24 concerns.

25 THE ARBITRATOR: Hopefully.

1 MR. JACOBS: Hopefully.

2 THE ARBITRATOR: I note, with regard  
3 to the profit withdrawal proceeding, that at  
4 least tangentially it relates to some of the  
5 good-faith claw-back cases because there's a  
6 letter Ms. Chaitman sent on December 8th that  
7 said that one of your arguments supports her  
8 discovery argument.

9 MR. JACOBS: Right. Well, we can  
10 discuss that later if that's ours.

11 MR. HUNT: Sure.

12 THE ARBITRATOR: We'll get to that.  
13 I'm not trying to put the cart before the  
14 horse.

15 MS. CHAITMAN: Judge, I just want to  
16 say one other thing.

17 THE ARBITRATOR: Sure.

18 MS. CHAITMAN: I sympathize with you  
19 coming into this case because it's so  
20 incredibly complicated. And we've been  
21 living with it since 2009.

22 When you asked whether the profit  
23 withdrawal was part of the inter-account  
24 transfer issue, I just wanted to explain  
25 something to you.



1 THE ARBITRATOR: Right.

2 MS. CHAITMAN: If you look at  
3 Exhibit B to the complaint which sets out the  
4 deposits and withdrawals, in some cases,  
5 there's an indication that there's a deposit  
6 into the account from another Madoff account.

7 THE ARBITRATOR: Right.

8 MS. CHAITMAN: Now, when we are  
9 litigating the net equity of a defendant, we  
10 want to look at the transferor account and  
11 see whether there were profit withdrawals  
12 that the client claims were never received.  
13 So --

14 THE ARBITRATOR: And I gather that the  
15 CAD -- I forget what the acronym stands  
16 for -- that you get includes the paperwork,  
17 to the extent the trustee has it, that  
18 underlies those transferor accounts.

19 MR. JACOBS: That's correct, your  
20 Honor.

21 MS. CHAITMAN: Some of them date back  
22 beyond -- they don't have the records.

23 THE ARBITRATOR: Sure. And I gather  
24 the Madoff deposition, which I read, really  
25 went to the issue of whether some of those

1           purported dividends were real or not. Is  
2           that part of what you were exploring?

3                   MS. CHAITMAN: Yes, because the  
4           trustee has taken the position from inception  
5           that Madoff never purchased any securities  
6           for his investment advisory customers. And  
7           Frank DiPascali, who was Madoff's right-hand  
8           man, who was the government's chief witness  
9           in the criminal trial --

10                   THE ARBITRATOR: He's now dead?

11                   MS. CHAITMAN: He died, yes.

12                   But he pled in federal court. And in  
13           his plea, he started out by saying, early in  
14           the 1990s, we started a fraud with respect to  
15           the investment advisory --

16                   MR. JACOBS: That's not actually what  
17           Mr. DePascali said in the proceedings. I  
18           would like the record to reflect his actual  
19           testimony, not Ms. Chaitman's  
20           characterization --

21                   THE ARBITRATOR: I'm confident that  
22           one of you is right. Why doesn't somebody --  
23           and since the trustee seems to have more  
24           funding than Ms. Chaitman, why don't you just  
25           send me a copy of the guilty plea allocution.

1 MR. JACOBS: I will be happy to.

2 MS. CHAITMAN: And then Mr. Madoff has  
3 testified that the fraud began in 1992. So  
4 if that's true, if Judge Bernstein finds  
5 that, in fact, the fraud began in 1992, then  
6 all of the net equity calculations for  
7 accounts which predate 1992 would have to be  
8 recalculated.

9 THE ARBITRATOR: And the trustee's  
10 position, I gather, is that, from inception,  
11 Madoff was a Ponzi scheme.

12 MR. JACOBS: To the best of our  
13 knowledge, yes, and that the early periods of  
14 the fraud are the subject of litigation right  
15 now by Ms. Chaitman. The court has  
16 authorized a second deposition of Bernard  
17 Madoff on that issue.

18 But as it stands now, our position is  
19 that the only evidence that that is true is  
20 Mr. Madoff's own self-serving statements to  
21 that effect, which are not consistent with  
22 any of the debtors' books and records.

23 THE ARBITRATOR: Okay. Obviously  
24 that's not an issue we're going to resolve.

25 I saw on ECF that one of the Collura

1 reports, and maybe there is only one, is 705  
2 pages. I was wondering in relation to all of  
3 this whether it makes sense for me to look at  
4 the Dubinsky report, some specimen of Collura  
5 reports and the Greenblatt report or whether  
6 that would be a waste of my time and your  
7 money.

8 MR. JACOBS: In terms of your  
9 knowledge as context and background --

10 THE ARBITRATOR: Exactly.

11 MR. JACOBS: -- for these and other  
12 discovery disputes?

13 THE ARBITRATOR: Yes.

14 MR. JACOBS: We'd be happy to provide  
15 a copy of that -- of those reports for you.  
16 And perhaps we can choose a representative --

17 MR. HUNT: I think none of the cases  
18 that we're talking about today have the  
19 Greenblatt and Collura reports yet. So you'd  
20 be looking at a report out of context of  
21 these cases. It would just be an exemplar of  
22 what they do for us.

23 MR. JACOBS: Right.

24 Which in and of itself you may find  
25 helpful.

1 THE ARBITRATOR: I assume it basically  
2 walks somebody through the Exhibit B; is  
3 that --

4 MR. JACOBS: Exhibit B?

5 THE ARBITRATOR: To the complaint.

6 MS. CHAITMAN: Not exactly.

7 THE ARBITRATOR: A typical Collura  
8 report?

9 MR. JACOBS: Yes, it does.

10 MS. CHAITMAN: The case-specific ones.

11 MR. JACOBS: The case-specific reports  
12 do, yes.

13 THE ARBITRATOR: Is there also an  
14 overarching Collura report?

15 MR. JACOBS: There's a component --  
16 and this is going to be my crude, potentially  
17 not entirely accurate, sort of shorthand of  
18 what her report does. But essentially  
19 Ms. Collura's report, together with  
20 Mr. Greenblatt's report, provide a  
21 reconciliation of all of the cash  
22 account trans- -- transaction activity at  
23 BLMIS from the period for which we have bank  
24 statements forward.

25 So essentially what the trustee is



1           doing, your Honor, is -- we have a complete  
2           set of third-party bank records from BLMIS's  
3           accounts, I believe it's from 1981 or 1982.  
4           And we credit all of the customers' account  
5           statements for the full amount of their  
6           account balance as of that date, and then we  
7           start our net equity calculation by comparing  
8           what the customer account statements say with  
9           independent third-party, usually JPMorgan,  
10          financial records.

11                   THE ARBITRATOR: So if the account  
12           says there's a hundred thousand dollars in it  
13           in 1980, you're not challenging that?

14                   MR. JACOBS: We give credit to the  
15           customer for the full amount of that  
16           account -- that statement balance, whether  
17           it's fictitious profits or not.

18                   What we're saying is that if we can't  
19           independently verify it through what our  
20           experts do in these reports, then we're not  
21           going to challenge it for those early, early,  
22           early periods.

23                   MS. CHAITMAN: Ted, I think you may  
24           have misspoken. Because it's my  
25           understanding that you have JPMorgan Chase

1 bank records from December 1988 on and you  
2 have Madoff records from 1981.

3 MR. JACOBS: That is correct. Thank  
4 you. That is correct. Sorry. I flipped the  
5 account statements with the bank statements  
6 and that early date.

7 So back to your question, where I  
8 was -- where I was going was, together  
9 Ms. Collura and Mr. Greenblatt -- what their  
10 analysis does is show that the account  
11 activity in the customer statements is  
12 reliable across the universe of account  
13 statements that we have going back, thank  
14 you, to the early 1980s because the periods  
15 for which we have bank records, when compared  
16 to those customer statements, match to a near  
17 certainty of close to 100 percent of the  
18 time.

19 So their expert analysis is that the  
20 cash activity 100 percent or near 100 percent  
21 of the time is reliable on the face of  
22 Madoff's statements. That's sort of the  
23 case-wide function in a nutshell of those  
24 reports. And, again, I would like to just  
25 reserve the right to let the reports speak

1 for themselves. And I'm not an expert. I'm  
2 not as smart as they are. So if I misspoke  
3 or made any misstatement or  
4 mischaracterization, I apologize in advance.

5 THE ARBITRATOR: Why don't you send me  
6 the reports understanding that the Collura  
7 reports have not been served in any of the  
8 cases that we're talking about currently.  
9 And if I begin to look at them and realize  
10 I'm going off into an area that I shouldn't  
11 worry about, at least now, I'll be glad to  
12 abandon reading it.

13 MS. CHAITMAN: Judge, I just want to  
14 warn you, the complete set of Collura  
15 reports, not case-specific, but the ones that  
16 have been produced in the profit withdrawal  
17 litigation, are probably six times this  
18 binder.

19 THE ARBITRATOR: Just to be clear, I  
20 don't want a complete set. I would like a  
21 specimen report, understanding that each one  
22 may be unique and that --

23 MR. JACOBS: The profit withdrawal  
24 reports were geared towards the issues that  
25 were in contention. I think the adversary

1 proceeding reports are much smaller,  
2 certainly without the exhibits.

3 MS. CHAITMAN: Okay.

4 MR. JACOBS: So I'll take a look. And  
5 if it makes sense to exclude exhibits, I can  
6 give you a list of what they are.

7 THE ARBITRATOR: Sure.

8 MR. JACOBS: And if you want to have  
9 them, we're happy to make whatever you would  
10 like.

11 THE ARBITRATOR: Then just in terms of  
12 procedure, to the extent I rule today, a  
13 number of things could happen.

14 One, I could reduce that to an order.  
15 Two, I could say look at the transcript,  
16 that's my order. I suppose in some areas, I  
17 could issue a more detailed decision. I'm  
18 here to try and be user-friendly, so tell me  
19 what you think makes sense and maybe for  
20 different areas, different results should  
21 obtain.

22 MS. CHAITMAN: If I can step in first,  
23 your Honor.

24 THE ARBITRATOR: Sure.

25 MS. CHAITMAN: I think, as I

1 understand it, the procedure would be that  
2 your decisions, if someone wants to appeal  
3 them, would be appealed to Judge Bernstein  
4 and then to the District Court.

5 THE ARBITRATOR: Sure. Yep.

6 MS. CHAITMAN: So I think, in that  
7 respect, it would be helpful to have an  
8 order.

9 Do you disagree with that?

10 MR. JACOBS: We agree that an order  
11 would be helpful. And as Ms. Chaitman notes,  
12 she has many cases. We'll be, I'm sure,  
13 talking about the applicability of those  
14 orders in those cases and hopefully working  
15 that out.

16 And also we have many hundreds of  
17 cases in addition to that with other  
18 defendants. So an order gives us an ability  
19 to start a good-faith discussion with those  
20 defendants to the extent similar issues arise  
21 and hopefully resolve them so that they are  
22 coming before your Honor.

23 THE ARBITRATOR: And, similarly, I'm  
24 in the odd circumstance now where I'm a  
25 retired attorney, although I intend to remedy



1 that. But I issued the decision in Crupi and  
2 I think my case manager asked that the  
3 trustee file it.

4 MR. JACOBS: Yes.

5 THE ARBITRATOR: I looked yesterday  
6 and didn't see that it was filed, so I --

7 MR. JACOBS: We are working on that.  
8 We will get that filed. We just needed to  
9 put together a motion. And I know that's  
10 been done, and I'll check with my team and  
11 get it filed.

12 THE ARBITRATOR: Okay. So I guess for  
13 the time being, to the extent I issue orders,  
14 I'll ask the parties to file them. At some  
15 point, I'll probably ask Judge Bernstein to  
16 have me declared an interested party, which I  
17 guess would then permit me to file directly  
18 on the NCF.

19 MR. JACOBS: That answers our question  
20 as to why you didn't go ahead and file that.  
21 We're happy to do it.

22 MS. CHAITMAN: Is that something we  
23 can arrange for the judge?

24 MR. JACOBS: I thought we'd just have  
25 a simple motion saying, at the request of the

1 arbitrator, we'd like to file this decision  
2 in this case, but it's not a case in which  
3 you're involved.

4 MS. CHAITMAN: No, but wouldn't the  
5 judge -- if he files a notice of appearance,  
6 wouldn't he have the right to file a  
7 decision?

8 THE ARBITRATOR: But I can't file a  
9 notice of appearance for two reasons. One,  
10 at the moment, I'm not an attorney. I'm a  
11 retired attorney. And I looked at the form,  
12 and I have to represent that I'm an attorney  
13 in good standing. And I'm not sure whether  
14 that representation would be accurate.

15 If neither side objects, maybe what  
16 I'll just do is call Judge Bernstein's  
17 chambers and see how they suggest I handle  
18 that.

19 MR. HUNT: That sounds fine.

20 THE ARBITRATOR: Okay. Then it really  
21 falls into the category of minutia, but I see  
22 references often to House 5 and House 17. I  
23 know it doesn't relate to anything I'm doing  
24 currently, but I couldn't resist asking.

25 MR. JACOBS: Okay. House -- it's an

1 easy explanation. These are informal  
2 nicknames that BLMIS had for its different  
3 operations. House 17 is the investment  
4 advisory business that, as you know, the  
5 trustee understands was operating a Ponzi  
6 scheme. Ms. Chaitman's clients were House 17  
7 customers, and that's the investment advisory  
8 business.

9 House 5 was the part of BLMIS's  
10 business, for lack of a better word, where  
11 there was proprietary trading happening and  
12 there was a market-making business function.  
13 And that the trustee contends is the only  
14 portion of the business through which any  
15 actual securities trades were conducted at  
16 any given point in time.

17 THE ARBITRATOR: And are those the two  
18 houses? Is there anything else?

19 MR. JACOBS: That's it. That's  
20 essentially it. So if and when you review  
21 Mr. Dubinsky's report, you'll see a lengthy  
22 discussion about how BLMIS operated as a  
23 whole and how those different portions were  
24 interrelated, both from a financial  
25 perspective and from a fraud and Ponzi scheme

1 perspective.

2 THE ARBITRATOR: Why don't we then  
3 turn to the trustee's motion to compel.

4 MR. JACOBS: Sure.

5 THE ARBITRATOR: Unless there were any  
6 other housekeeping matters that any of you  
7 wanted to bring up.

8 MR. JACOBS: I don't think so, your  
9 Honor.

10 THE ARBITRATOR: Ms. Chaitman?

11 MS. CHAITMAN: No.

12 THE ARBITRATOR: Okay. Why don't we  
13 deal with the third-party subpoenas to the  
14 banks first.

15 MR. JACOBS: I'm not sure that we  
16 have --

17 MR. HUNT: None of those are before  
18 you right now.

19 THE ARBITRATOR: Oh. I thought that  
20 issue was before me, but --

21 MS. CHAITMAN: It is in connection  
22 with the responses to some of our  
23 interrogatories where we --

24 MR. HUNT: There's no subpoena that's  
25 being contested here today.

1 THE ARBITRATOR: Okay. But it does --

2 MS. CHAITMAN: It comes up. It does  
3 come up.

4 THE ARBITRATOR: -- deal with the  
5 completeness of the responses regarding the  
6 accuracy of Exhibit --

7 MR. HUNT: I think it comes up  
8 tangentially in that regard.

9 THE ARBITRATOR: Well, rather than me  
10 then guiding the discussion, why don't you  
11 tell me in relation to that motion what the  
12 trustee wants to talk about first.

13 MR. HUNT: So there are actually three  
14 cases where we filed a motion to compel --

15 THE ARBITRATOR: Right.

16 MR. HUNT: -- the Train Klan case, the  
17 DiGiulian case and the Benjamin case.

18 As I'm sure you're aware, having  
19 reviewed our pleadings, there are a lot of  
20 very similar issues here. Specifically the  
21 defendants assert a number of affirmative  
22 defenses, which they bear -- bear the burden  
23 of proving, of course, in which they have  
24 chosen to just deny us discovery about in its  
25 entirety.

1                   Second of all, while the defendants on  
2                   the one hand say they don't dispute  
3                   Exhibit B, they spend a large amount of time  
4                   in their answers explaining why Exhibit B is  
5                   not accurate and why the records that we have  
6                   are not admissible and why we can't prove our  
7                   case. So we clearly have the right to take  
8                   discovery on those issues.

9                   So what I thought might make some  
10                  sense is to just talk through the discovery  
11                  responses themselves, starting with Train  
12                  Klan, which is the most complicated one. And  
13                  I think by the time we get to Benjamin, we  
14                  will be starting to repeat ourselves a bit.

15                  THE ARBITRATOR: Well, I'm sure it's  
16                  right that there's overlap and that we'll all  
17                  be repeating ourselves. One of the things I  
18                  guess I began to have a feel for what you've  
19                  all been struggling with is, obviously there  
20                  were boilerplate responses to your requests.  
21                  And that worked both ways. And clearly some  
22                  word processing errors also --

23                  MR. HUNT: I agree with that.

24                  THE ARBITRATOR: -- on both sides.

25                  But, sure. Train Klan, you've asked



1 for a lot of partnership material. Judge  
2 Bernstein dismissed the claims against  
3 subsequent transferors in a number of these  
4 claw-back cases --

5 MS. CHAITMAN: Transferees.

6 THE ARBITRATOR: Transferees. Excuse  
7 me.

8 -- saying that there was insufficient  
9 information pled. General partners of a  
10 limited partnership are treated as alter egos  
11 of the partner, but limited partners, as I  
12 understand the law, are not. You seem to be  
13 asking for information as to both.

14 MR. HUNT: We're asking for  
15 information about the partners. With respect  
16 to Train Klan, all they say is there are  
17 partners. Of course, the partnership  
18 documents and percent ownership interest and  
19 type of partner is all relevant exactly for  
20 the reason you said.

21 Moreover --

22 THE ARBITRATOR: Why is anything --  
23 and it may be that you end up with the same  
24 documents, but if my order in that area were  
25 to be that Ms. Chaitman's client, Train

1 Klan -- I guess it's really two defendants  
2 with the Train Klan partnership -- must  
3 produce documents to show -- sufficient to  
4 show you over time who the general partners  
5 were.

6 Why doesn't that satisfy your need,  
7 yet respond to Ms. Chaitman's concern?

8 MR. HUNT: We don't know even what  
9 type of entity Train Klan is. It says it's a  
10 partnership. We don't know if it's a general  
11 partnership, a limited partnership or what  
12 kind of entity it is.

13 So what we're seeking is the legal  
14 name of the partnership, the type of entity  
15 it is, the basic information about that  
16 entity, when it was established, whether it  
17 was formed out of a predecessor entity, which  
18 state or country it's incorporated in or  
19 where it's --

20 THE ARBITRATOR: By definition,  
21 probably it's not incorporated.

22 MR. HUNT: Well, yes.

23 Which state or country was it formed.  
24 What law applies they think. And the names  
25 and addresses of the current and former

1 partners, members, whatever that may be, and  
2 their ownership interest in that partnership.

3 That establishes the liability of the  
4 partners, I think. We don't have any of that  
5 information. And I'm not sure that a --

6 THE ARBITRATOR: Let's say, for  
7 argument's sake, you're a 10 percent limited  
8 partner and I'm a 5 percent limited partner  
9 and the court reporter is the general  
10 partner. Once you establish that the court  
11 reporter, Ms. Mulvenna, is the general  
12 partner, putting aside the other materials  
13 around that that you're interested in, why  
14 does it matter whether I have 5 percent and  
15 you have 10 percent or vice versa or who the  
16 other limited partners may be?

17 MR. HUNT: We don't know, first of  
18 all, if there are any limited partners. But  
19 second of all, depending upon how this entity  
20 is set up, each of those individuals may be  
21 liable for their percentage share as a direct  
22 transferee depending on how the proceeds are  
23 distributed. We don't know because they  
24 won't tell us.

25 THE ARBITRATOR: Ms. Chaitman.

1 MS. CHAITMAN: Well, you know, we have  
2 a tension here because, as you've recognized,  
3 Judge Bernstein held that the complaints  
4 against the subsequent transferees failed to  
5 state a claim. And we have cases from United  
6 States Supreme Court on down saying you can't  
7 take discovery in order to obtain the facts  
8 you need to file a complaint.

9 And, indeed, the trustee has used  
10 those cases against me when I've sought to  
11 take discovery in order to get the facts  
12 which would allow me to state a claim.

13 So I don't think that the trustee can  
14 argue that that line of cases does not apply  
15 here. And what I've tried to do is protect  
16 my clients, as I believe I'm entitled to, by  
17 not disclosing anything which would give the  
18 trustee the precise information he's seeking  
19 because he wants to be able to name the  
20 individuals.

21 And if I have to disclose how much  
22 each person has, he's going to then sue them  
23 for that percentage of the withdrawals. And  
24 I think that I'm entitled to -- he's entitled  
25 to get a judgment against the account holder.

1 And if the account -- if the judgment isn't  
2 paid, then he can sue the individual  
3 partners. But that's the order that the  
4 United States Supreme Court has established.  
5 And I don't think that he should be entitled  
6 to circumvent that.

7 THE ARBITRATOR: One of my problems is  
8 I think I agree with both of you. And I also  
9 think, as a general operating principle, that  
10 if either side is entitled to discovery for  
11 Reason A, the fact that it may also be  
12 helpful as to undisclosed Reason B is not a  
13 basis to turn down a request for discovery.

14 But specifically with respect to Train  
15 Klan, I think what I'm going to require be  
16 produced are any partnership agreements. And  
17 in doing that, I note that -- I think it was  
18 Cravath Swain & Moore operated for many years  
19 with no written partnership agreement. So  
20 I'm mindful that perhaps there are no  
21 partnership agreements or not ones of the  
22 formality that we're used to.

23 But any partnership agreements for the  
24 relevant time period. And I guess that will  
25 then lead to a discussion of what the

1 relevant time period is. It may be from  
2 formation. And as I said, documents  
3 sufficient to show who the general partner,  
4 or partners, over time of the partnership  
5 are.

6 MR. HUNT: The relevant time period is  
7 1993 forward.

8 THE ARBITRATOR: Okay. Just so I  
9 understand, explain to me why --

10 MR. HUNT: That's when the account was  
11 opened, in May of 1993.

12 THE ARBITRATOR: Okay. So whatever  
13 partnership agreement existed then. If the  
14 partnership was formed in 1970, which is  
15 unlikely, you wouldn't have to produce that  
16 partnership agreement unless it was the  
17 operative agreement in 1993.

18 MS. CHAITMAN: But the trustee's only  
19 permitted to sue to recover withdrawals taken  
20 within the last two years prior to Madoff's  
21 confession. So why would partnership  
22 agreements that predate December 11, 2006,  
23 have any relevance?

24 THE ARBITRATOR: Well, I think that  
25 the trustee is entitled to know how the



1 partnership was organized. And as I  
2 understand Judge Bernstein's rulings,  
3 although maybe here I'm going beyond my role,  
4 and the case law, it doesn't appear that the  
5 trustee has a basis at the moment pursuing a  
6 limited partner. But the trustee may have a  
7 different view of that.

8 MR. HUNT: So just to be clear, in  
9 this particular case, we've sued the partners  
10 who we know of.

11 THE ARBITRATOR: You've sued the whole  
12 group of people; correct?

13 MR. HUNT: Which we assume are general  
14 partners based on what information we have.

15 THE ARBITRATOR: But assuming there's  
16 a formal partnership agreement and that one  
17 of those defendants is the general partner  
18 and others are limited partners, I'm not sure  
19 that under the case law and Judge Bernstein's  
20 rulings, that there's a basis for suing the  
21 limited partners.

22 MR. HUNT: Right. But she has to give  
23 us the information showing they're limited  
24 partners before we can talk about that.

25 THE ARBITRATOR: She has to give you

1 the information showing you, under my ruling,  
2 who the -- or the documents showing you who  
3 the general partner is. That document may  
4 also show you who the limited partners are.  
5 But documents can't be redacted, as far as  
6 I'm concerned, on the basis of relevance.

7 So it may, through the back door, give  
8 you information about percentages of who the  
9 limited partners are. But my understanding  
10 of the case law is that the general partner  
11 is not considered a subsequent transferee  
12 because the general partner is, in effect,  
13 the alter ego of the partnership.

14 MR. HUNT: I agree with that. In this  
15 particular case, we have sued each of the  
16 partners in their capacity as a partner.

17 THE ARBITRATOR: Right.

18 MR. HUNT: So if Ms. Chaitman wants to  
19 get them dismissed from the case, she has to  
20 prove to us that they're limited partners.  
21 We can't take it at -- her at her word. If  
22 she wants them out, she has to tell us why  
23 she wants them out, I would say.

24 THE ARBITRATOR: I'm going to adhere  
25 to my ruling. Why don't you wait and see

1 what documents you get in response to that  
2 ruling. Maybe it will become a non-issue.  
3 If it still is a concern, we can deal with it  
4 on a more granular level.

5 MR. HUNT: Okay. The other thing too,  
6 just to be clear, your ruling has to do with  
7 documents, but I would like them also to  
8 answer the interrogatories relating to those  
9 points. So we don't have to go through the  
10 documents and figure out what the answer  
11 might be.

12 THE ARBITRATOR: Let's deal with  
13 specific interrogatories so that we have a  
14 somewhat definitive answer.

15 MR. HUNT: That sounds great. Thank  
16 you.

17 So we received two responses to  
18 interrogatories in Train Klan.

19 THE ARBITRATOR: One on behalf of the  
20 partnership, one on behalf of the  
21 individuals.

22 MR. HUNT: Right. And with respect to  
23 the individuals, I have an issue with that.  
24 Because Ms. Londa signed with power of  
25 attorney as a partner for each of the

1 individuals. We never did get a response  
2 from the individuals.

3 So I would like -- if the court -- if  
4 your Honor would help us with that. I'd like  
5 to get actual answers from each of the  
6 defendants rather than someone signing with  
7 power of attorney for all of them.

8 THE ARBITRATOR: Well, what I'm  
9 inclined to do -- and if schedule were not an  
10 issue, let me tell you what I'd be inclined  
11 to do. And although I understand all of  
12 these cases have their own schedules, there  
13 must be some sort of overarching view of how  
14 these cases will ultimately get resolved.  
15 And that big picture view I express complete  
16 ignorance as to.

17 But if scheduling were not an issue,  
18 what I would be inclined to do is say the  
19 partnership should respond. And then,  
20 depending upon that, it may be unnecessary  
21 for the individuals to respond depending on  
22 the documents and interrogatory responses you  
23 receive.

24 Maybe there's some belt and suspenders  
25 approach you'd want down the road. I could

1 see certifications from each of the  
2 individuals that they've never -- who are not  
3 general partners, that they've never been a  
4 general partner.

5 But I'm not unsympathetic to what  
6 Ms. Chaitman says about the extent of their  
7 limited partnership interest being none of  
8 the trustee's business assuming that they  
9 were only limited partners --

10 MR. HUNT: Assuming that it's even a  
11 partnership.

12 THE ARBITRATOR: -- and that it's a  
13 partnership that observed formalities rather  
14 than the equivalent of an investment club of  
15 people who get together once a week and  
16 say --

17 MR. HUNT: Right. I mean, that's what  
18 we're finding some of these things are. And  
19 so it may not even be a partnership as far as  
20 we know.

21 THE ARBITRATOR: So let me get back to  
22 what I was asking, which is, to the extent I  
23 make rulings like the one I just described,  
24 what impact does it have on that broad  
25 schedule of how these cases march their way

1 toward resolution?

2 MR. HUNT: For Train Klan  
3 specifically? Because that is --

4 THE ARBITRATOR: Why don't we stick  
5 with that, yes.

6 MR. HUNT: So I think what that does  
7 is it sort of makes it a two-step process.  
8 Because based upon what we learned from this  
9 sort of intermediate response, we still may  
10 have questions that we need to address and  
11 we'll have to come back to you.

12 THE ARBITRATOR: But I guess what I'm  
13 inarticulately trying to ask is, am I  
14 screwing up Judge Bernstein's schedule by  
15 doing that?

16 MR. HUNT: No. One of the things --  
17 I'll tell you this, we can't agree on much,  
18 but we can agree on scheduling issues. And  
19 the parties have the flexibility to move the  
20 schedule around to meet their needs. So to  
21 the extent there's a scheduling issue, I'm  
22 certain that Ms. Chaitman will accommodate  
23 additional scheduling time to resolve it.  
24 She has in the past.

25 MS. CHAITMAN: And I'm sure you've



1           seen there are so many issues, we haven't  
2           gotten discovery on two. And obviously we're  
3           going to need to extend the discovery.

4           THE ARBITRATOR: Okay. And Judge  
5           Bernstein is, to use the vernacular, cool  
6           with that?

7           MR. HUNT: Yes, sir.

8           MR. JACOBS: If by agreement of the  
9           parties, it's never been an issue.

10          THE ARBITRATOR: Okay. Great.  
11          So as to the partnership, I ruled with  
12          respect to --

13          MR. HUNT: I'm sorry I interrupted  
14          you.

15          THE ARBITRATOR: I was going to say  
16          what you just volunteered. Let me find --

17          MR. HUNT: You're smart enough to copy  
18          yours double-sided.

19          THE ARBITRATOR: No, you sent this to  
20          me so --

21          MR. HUNT: We're smart enough to do it  
22          for you.

23          THE ARBITRATOR: Except I'm looking at  
24          the wrong --

25          MR. HUNT: It's Interrogatory No. 1 to

1 the -- the answers to the interrogatories  
2 sent by Train Klan are identical to the ones  
3 that we received from the individuals signed  
4 by Ms. Londa on behalf of the individuals.

5 THE ARBITRATOR: So it's  
6 Interrogatory 1 --

7 MR. HUNT: The response we got was  
8 that this information is not relevant. And I  
9 think you've already ruled that, to the  
10 extent that these -- first of all, we need to  
11 know if it's a partnership, what kind of  
12 partnership it is, and who the partners are.  
13 Looks like the only thing you were  
14 withholding or that we could think you'd  
15 potentially withhold is the percent  
16 beneficial interest to the account.

17 THE ARBITRATOR: Well, I would modify  
18 it -- after the words "the names and  
19 addresses of its current and former," I would  
20 insert the word "general partners" and cross  
21 out everything up to "its current and former  
22 business addresses and current and former  
23 principal places of business."

24 And since I was ruling with respect to  
25 documents, conceivably Ms. Chaitman could

1 answer that by saying, see documents Bates  
2 Nos. 1 through whatever.

3 MR. HUNT: I would agree with that.

4 THE ARBITRATOR: Okay.

5 MR. HUNT: And then Interrogatory  
6 No. 2 also relates to that. We asked them  
7 for the dates and amounts of any transfers  
8 received by the partnership, whether the  
9 person was a partner, and state whether that  
10 person received any portion of the transfers.  
11 They respond by telling us who the partners  
12 are.

13 MS. CHAITMAN: Again, I think that  
14 that's precisely -- that runs afoul of the  
15 mandate from the Supreme Court on down that  
16 they're seeking discovery to frame a  
17 complaint against a subsequent transferee.

18 MR. HUNT: I can tell you one thing is  
19 certain -- and we've been accused about this  
20 repeatedly, and it's not true, and that is  
21 that we're using this discovery to form a  
22 complaint against someone else. That is not  
23 true.

24 What we're trying to do is find out  
25 where the money went so we can trace it, and

1 that's all we're trying to do.

2 THE ARBITRATOR: But as I understand  
3 case law regarding pleading and the case law  
4 that relates to who in a partnership is  
5 liable for the debts, and I'm using that in  
6 the generic way of the partnership, it's the  
7 general partner only. So I'm inclined to  
8 reserve decision on Interrogatory No. 2.  
9 Let's wait and see what happens with respect  
10 to Interrogatory No. 1.

11 It may be that, at a later date, I  
12 grant that request or other requests relating  
13 to transfers, but I think we need to see is  
14 there a real partnership.

15 MR. HUNT: I agree with you.

16 THE ARBITRATOR: If it's got a binder  
17 of documents reflecting meetings of the  
18 partnership and the like, it's a very  
19 different animal than if it's an investment  
20 club.

21 MR. HUNT: I agree with you. I think  
22 that's a great resolution of that  
23 Interrogatory No. 2.

24 THE ARBITRATOR: Okay.

25 MR. HUNT: Interrogatory No. 3 we

1 asked for reasons for each transfer. And  
2 they simply say they're not able to do so.  
3 Someone, the general partner or someone,  
4 requested this transfer and we want to know  
5 why and what was the intent of the use of the  
6 money.

7 THE ARBITRATOR: Well, again, let's  
8 see who the general partner is because I  
9 probably -- assuming there is a general  
10 partner, that it has some formality, I  
11 probably would require the general partner to  
12 answer that question, but not the other  
13 partners. So --

14 MS. CHAITMAN: Why would that be  
15 anything other than discovery to frame a  
16 complaint?

17 THE ARBITRATOR: Well --

18 MS. CHAITMAN: Because, again, if the  
19 account -- we're not disputing that the  
20 account holder took the money. So now you're  
21 going to the next generation of transfers.

22 THE ARBITRATOR: Well, I don't know  
23 which defenses you asserted with respect to  
24 partnership, but potentially it could impact  
25 some of your affirmative defenses. But to be

1 clear, I'm not ruling that that is the way I  
2 would rule.

3 MR. HUNT: I'm comfortable with you  
4 deferring a ruling on that pending obtaining  
5 some additional documents and information  
6 about this entity, whatever it is.

7 THE ARBITRATOR: Train Klan also  
8 raises the question -- and I'm jumping ahead  
9 and perhaps out of the order -- the trustee  
10 wanted to raise issues, but there's -- in  
11 response to "Identify each deposit into the  
12 account" is the answer "Responding parties do  
13 not dispute the deposits and withdrawals  
14 shown on Exhibit B," but then there's the  
15 caveat about "The records are permeated with  
16 fraud, no records exists before 1998, so  
17 trustee has no competent evidence of any  
18 activity in the account prior to  
19 December 1998," although this speaks to what  
20 I was talking about about boilerplate used by  
21 both sides.

22 As I understand what I was told, this  
23 account didn't exist before 2003, so it  
24 doesn't much matter what happened in 1998.  
25 But let me not jump ahead and --



1 MR. HUNT: I think that's exactly the  
2 next place I was going as well, was  
3 Interrogatory No. 5.

4 THE ARBITRATOR: Okay.

5 MR. HUNT: You know -- and this is  
6 sort of something we see across all of these  
7 responses, which is, they say they don't  
8 dispute, whatever that means, the deposits  
9 and withdrawals shown on Exhibit B. It seems  
10 like what they're not disputing is that the  
11 numbers appear on the page.

12 Because then they go on to say there  
13 are all these problems with the numbers and  
14 they have affirmative defenses that say we  
15 can't prove the deposits and withdrawals. So  
16 anytime you see an answer that's supposed to  
17 be some kind of an admission followed by the  
18 word "however" and then followed by the word  
19 "moreover," it's not.

20 And so we have the right to ask them  
21 to identify each deposit into the account so  
22 that we can figure out if they do actually  
23 dispute any of them.

24 THE ARBITRATOR: Well, what I find  
25 particularly confusing, Ms. Chaitman, is, as

1 to bank records -- third-party bank records,  
2 in some of these answers, although that may  
3 be moot now, you've said, you're not entitled  
4 to it because we don't dispute the deposits  
5 and withdrawals on Exhibit B, but then the  
6 20th affirmative defense says, "The trustee  
7 has fraudulently calculated defendants'  
8 liability." It's hard to square those two  
9 responses.

10 MS. CHAITMAN: Well, I have offered  
11 to -- when we concede the accuracy of the  
12 deposits and withdrawals, we're agreeing that  
13 Exhibit B is accurate. And that obviously --  
14 I'm volunteering that, and obviously that can  
15 be enforced against my clients, there's no  
16 question about that.

17 However, when we go to trial, the  
18 trustee may try to rely upon records of  
19 Madoff beyond Exhibit B. All I'm conceding  
20 is that Exhibit B is accurate. I'm not  
21 conceding that Madoff's records are accurate.  
22 In fact, Picard's own expert has said that  
23 Madoff's records are permeated with fraud.

24 So I'm simply reserving the right to  
25 object to other records. I'm not contesting

1 the accuracy of Exhibit B.

2 MR. HUNT: That's not accurate.

3 THE ARBITRATOR: Pull up Exhibit B. I  
4 don't have the Train Klan --

5 MR. HUNT: I've got it right here.

6 THE ARBITRATOR: But I've -- really  
7 for these purposes, it's only the columns.  
8 There were a number of ways in which one  
9 could interpret your response, one of which  
10 is, for the two-year period at issue, we  
11 don't dispute the deposits and withdrawals.

12 Another is that we don't dispute  
13 Columns 1 through 10, which takes you through  
14 the two-year fraudulent transfer calculation.  
15 As I understand it, the six-year fraudulent  
16 conveyance calculation is basically  
17 irrelevant --

18 MR. HUNT: That's correct.

19 THE ARBITRATOR: -- as to everybody  
20 we're going to be talking about today.

21 MR. HUNT: That's correct.

22 THE ARBITRATOR: So is it that you're  
23 agreeing with Columns 1 through 10?

24 MS. CHAITMAN: We're agreeing with the  
25 deposits and withdrawals, which are Column 4

1 and 5.

2 THE ARBITRATOR: Right. Another way  
3 of saying that is you're agreeing with the  
4 net equity calculation; is that --

5 MS. CHAITMAN: Well, we're agreeing --  
6 we contest the --

7 THE ARBITRATOR: Column 5 gives you at  
8 the bottom a net equity number.

9 MS. CHAITMAN: Right. We're agreeing  
10 with -- we're agreeing that the cash deposits  
11 are accurately reflected in Column 4 and the  
12 cash withdrawals are accurately reflected in  
13 Column 5.

14 We're not agreeing -- we're not  
15 agreeing as to the trustee's calculation of  
16 principal because we don't agree that in  
17 the -- in these cases, the trustee is allowed  
18 to recover.

19 THE ARBITRATOR: Okay.

20 MS. CHAITMAN: So -- you know, that's  
21 why I tried to be very specific. We're  
22 agreeing to the deposits and withdrawals.

23 THE ARBITRATOR: Just to be clear,  
24 using Train Klan, it shows a negative number  
25 of \$1,442,181 because more money was taken

1 out than was put in.

2 MS. CHAITMAN: Correct.

3 THE ARBITRATOR: And you're not  
4 disputing that.

5 MS. CHAITMAN: The math, correct. Or  
6 the deposits and withdrawals.

7 But, again, I have the reservation  
8 because there are a lot of other books and  
9 records that may become relevant. And I  
10 don't want to come to trial and find out that  
11 I've conceded the accuracy of all of Madoff's  
12 records, because I haven't.

13 THE ARBITRATOR: Well -- and by  
14 agreeing with 4 and 5, you're also agreeing  
15 with 1 through 3, the dates and --

16 MS. CHAITMAN: Well, yes. But in this  
17 particular instance, we are, but in some,  
18 there are inter-account transfers. And it  
19 becomes much more complicated at that point.

20 THE ARBITRATOR: Sure. Let's deal  
21 with the purist case first, like Train Klan,  
22 where there are no inter-account transfers.

23 My thought was that rather than  
24 getting mired in the interrogatory responses,  
25 that this is better handled under the other

1 alternative that Judge Bernstein suggested at  
2 one of his conferences, which is a  
3 stipulation.

4 MS. CHAITMAN: I recall that. I think  
5 that's a good idea. We had no problem with  
6 that.

7 THE ARBITRATOR: So -- so the  
8 stipulation would be that the defendant in  
9 question does not dispute the accuracy or  
10 completeness of the information in Columns 1  
11 through 5 of Exhibit B of the relevant  
12 complaint.

13 MS. CHAITMAN: Well, the easier way to  
14 do it I think is 4 and 5. Because I have  
15 to -- in this case, we can do that, but where  
16 there are inter-account transfers, we can't.

17 THE ARBITRATOR: And I'm just trying  
18 to deal with the pure case.

19 MS. CHAITMAN: In this case, we can do  
20 that.

21 THE ARBITRATOR: The reason I said 1  
22 through 5 is because it's also relevant what  
23 the two-year look-back period is. So the  
24 dates are important; correct?

25 MS. CHAITMAN: Right.



1 THE ARBITRATOR: So you don't have a  
2 problem with what I just said --

3 MS. CHAITMAN: That's what --

4 THE ARBITRATOR: -- in actions where  
5 there are no complicating factors, whether  
6 it's inter-account transfers or -- I know one  
7 of the defendants said, I was not being  
8 credited or I was being charged with two  
9 \$25,000 -- I can't remember if it was deposit  
10 or withdrawal, it was probably withdrawal --  
11 that was double counted. Obviously there may  
12 be glitches like that. But for somebody who  
13 doesn't have inter-account transfers, that  
14 stipulation works?

15 MS. CHAITMAN: Yes.

16 THE ARBITRATOR: Okay. It seems to me  
17 that that eliminates a lot of the concerns  
18 about the interrogatory responses.

19 MR. HUNT: Yes. So I think what that  
20 means then is that, you know --

21 THE ARBITRATOR: And let me modify  
22 what I just said on the fly and say it should  
23 have the words in there "at trial." So at  
24 trial, the defendant will not challenge what  
25 I had said earlier.

1 MR. HUNT: I would agree with that.

2 And what that effectively means then  
3 is that she would be withdrawing, for  
4 example, the 20th affirmative defense.

5 MS. CHAITMAN: What's the 20th  
6 affirmative defense?

7 MR. HUNT: "Trustee has fraudulently  
8 calculated defendants' liability by charging  
9 defendants with withdrawals that the trustee  
10 has no proof were taken."

11 MS. CHAITMAN: In this case, I would,  
12 yes.

13 THE ARBITRATOR: Well, in any case  
14 where --

15 MS. CHAITMAN: Where I stipulate.

16 THE ARBITRATOR: -- you enter into  
17 that stipulation, the 20th defense takes a  
18 nose dive.

19 MS. CHAITMAN: Right.

20 MR. HUNT: Okay.

21 THE ARBITRATOR: And I think that  
22 obviates problems. It also -- even if there  
23 were inconsistent interrogatory responses or  
24 affirmative defenses, they go out the window  
25 because the stipulation controls.

1 MR. HUNT: Right.

2 So just to be clear then, that  
3 stipulation is now on the record here. So  
4 we're not going to spend time drafting  
5 something with her. Because we've tried this  
6 for a long time in the past.

7 THE ARBITRATOR: Well, once we get the  
8 transcript of this, and I'd ask that the  
9 trustee have it expedited, my order will say  
10 what I just said, with the modification that  
11 I just described. If either side thinks it  
12 needs more or fewer words, you can let me  
13 know that in a few days.

14 And I may or may not modify my order,  
15 but ultimately there will be an order saying,  
16 if Ms. Chaitman's clients stipulate to X,  
17 they need not modify particular interrogatory  
18 responses.

19 MR. HUNT: Okay.

20 THE ARBITRATOR: And -- and while  
21 we're talking about that, to the extent that  
22 her interrogatory responses or the  
23 stipulation withdraw particular affirmative  
24 defenses, I'm not sure much is accomplished  
25 by requiring Ms. Chaitman to file an amended

1 answer.

2 MR. HUNT: I agree. I think what I'd  
3 like to do is get it on the record that  
4 they're withdrawn. Because you can withdraw  
5 them and you can always reinstate them, but  
6 if there's an order and agreement they're not  
7 going to --

8 THE ARBITRATOR: If there's a  
9 stipulation --

10 MR. HUNT: I agree.

11 MS. CHAITMAN: If it's a stipulation  
12 as to certain facts. I think we have to be  
13 careful because we do -- again, this is -- if  
14 we're specifically talking about Train Klan,  
15 it's fine, but there are issues about  
16 fraudulent calculations that are earlier in  
17 time.

18 So we're not going to -- I may  
19 stipulate in a case, but I'm not going to  
20 withdraw some of the affirmative defenses.  
21 In other words, obviously if we stipulate  
22 that the deposits and withdrawals were made,  
23 that's binding. But that doesn't mean  
24 that --

25 THE ARBITRATOR: Let's take two cases,

1 one in which there are pre -- what was it,  
2 1998?

3 MS. CHAITMAN: December 1998 is when  
4 we have third-party bank records.

5 THE ARBITRATOR: So one in which there  
6 are records going back to the early '80s or  
7 Exhibit B reflects information going back to  
8 the early '80s. The second scenario, an  
9 account with inter-account transfers. Let's  
10 deal with the second of those first.

11 I suppose -- well -- and they may be  
12 the same issue because it may be that the  
13 transferor account predates the time period  
14 where you have -- where there are records and  
15 that gives rise to the concerns. But I think  
16 we're all in agreement that in cases where  
17 the stipulation is entered into, that solves  
18 the problem.

19 So let me turn to you, Ms. Chaitman,  
20 and say, where have you said, if anywhere,  
21 you don't dispute Exhibit B, but you still  
22 want to rely on the "however" and "moreover"  
23 language?

24 MS. CHAITMAN: Well, as you can  
25 appreciate, Judge, some of these accounts

1 date back to 1980.

2 THE ARBITRATOR: Right.

3 MS. CHAITMAN: And nobody has the  
4 records, nobody has a recollection, the  
5 people who owned the accounts may not be  
6 alive. So -- and the trustee's position is  
7 that the fraud existed from inception and  
8 that the records are permeated with fraud.

9 And in fact, we've made a motion now  
10 before Judge Bernstein in the profit  
11 withdrawal litigation barring the admission  
12 of Madoff's books and records because they  
13 don't come with any of the business record  
14 exceptions.

15 THE ARBITRATOR: I guess the trustee's  
16 position is that the records accurately  
17 reflect a fraud. So to the extent that  
18 there's language about permeated with or -- I  
19 know there was parallel language, perhaps,  
20 but they're arguing that all the trading from  
21 the beginning of time was fictitious.

22 You're contending that, based on  
23 Madoff and his colleague, some of the trading  
24 may have been real and that, therefore, the  
25 Ponzi presumption doesn't apply to the later



1 date.

2 Are there cases in which, because of  
3 the age of the relationship with Madoff's  
4 business or because of inter-account  
5 transfers, you have the language that you  
6 don't dispute the deposits and withdrawals on  
7 Exhibit B, but are still contesting the  
8 admissibility of the records?

9 MS. CHAITMAN: Yes. We -- we contest  
10 the admissibility of Madoff's records for any  
11 period when there aren't third-party bank  
12 records. And --

13 THE ARBITRATOR: So that's 1998  
14 backward?

15 MS. CHAITMAN: December 1998, yes.

16 And there may be instances where we  
17 would concede the accuracy of Exhibit B from  
18 a certain point on, but not before. So I  
19 think it would be -- it would be difficult  
20 for me to agree that, in every instance in  
21 which I can stipulate as to certain deposits  
22 and withdrawals, I can also stipulate that  
23 the affirmative defense that the records are  
24 fraudulent is taken out. I can't do that  
25 because I -- I think that Madoff's records

1 will not be admitted. I think they are not  
2 admissible.

3 THE ARBITRATOR: Once you stipulate to  
4 it --

5 MS. CHAITMAN: But only for a certain  
6 period. I'm not stipulating for the whole  
7 period. In other words, we can take it case  
8 by case, but --

9 THE ARBITRATOR: If we look at the two  
10 other defendants that are part of the  
11 trustee's motion, does that shed light on  
12 this?

13 MS. CHAITMAN: No, because in these  
14 three cases, we have conceded the accuracy of  
15 Exhibit B from inception.

16 THE ARBITRATOR: Okay. I'm open to  
17 suggestions as to how to proceed.

18 MR. HUNT: Yeah, I hear exactly what  
19 you're saying.

20 So just to be clear then, on Train  
21 Klan, taking it one at a time, the defendants  
22 are going to stipulate that all of the  
23 transactions that are listed in Exhibit B,  
24 Columns 1 through 5, accurately reflect the  
25 transactions that took place in this account.

1 THE ARBITRATOR: And will not be  
2 contested at trial.

3 MR. HUNT: And so with respect to  
4 Interrogatory No. 5 then, we asked them to  
5 identify each deposit. And by that we also  
6 need to know who received the deposit. So  
7 Exhibit B by itself does not answer that  
8 question.

9 So I'd like at least an answer as to  
10 whether or not the deposit was given to Train  
11 Klan or not; right?

12 THE ARBITRATOR: Well, deposits --

13 MR. HUNT: Or the withdrawals. Sorry.  
14 The deposit's been made by Train Klan. So  
15 for each deposit, did Train Klan make the  
16 deposit? And then, similarly, with respect  
17 to each withdrawal, who got the withdrawal,  
18 if Train Klan got the withdrawal.

19 MS. CHAITMAN: Well, you see, that's  
20 exactly the subsequent transferee discovery  
21 that the trustee is not permitted to take.

22 MR. HUNT: We need to know --

23 MS. CHAITMAN: You can't --

24 MR. HUNT: We have a right to know  
25 who -- if the -- who the initial transferee

1 is. We have a right to know that.

2 MS. CHAITMAN: The initial transferee  
3 is the account holder.

4 THE ARBITRATOR: I was about to say  
5 maybe the stipulation needs some  
6 supplementation to say, and does not dispute  
7 that the account holder received the  
8 withdrawal reflected in Column 5. That may,  
9 in a particular circumstance, be inaccurate.  
10 It may be that, rather than somebody getting  
11 a check payable to themselves, it was to  
12 their Bar Mitzvah caterer, but it solves your  
13 problem and eliminates the need to respond to  
14 that interrogatory.

15 MR. HUNT: I agree with that.

16 THE ARBITRATOR: Does that work for  
17 you?

18 MS. CHAITMAN: You're asking us to  
19 stipulate that the money was deposited into  
20 the account holder's account?

21 THE ARBITRATOR: Or that you're not  
22 disputing -- at trial, you will not dispute  
23 that that's the fact.

24 MS. CHAITMAN: So the money was  
25 deposited into the account holder's account.

1 Yes, I have no problem with that.

2 I don't think that that's what Dean  
3 was driving at. I think he's asking --

4 Dean, correct me if I'm  
5 misunderstanding you. I thought you wanted  
6 to know, once it went into the account  
7 holder's account, where did it go from there?

8 MR. HUNT: I need to know who got the  
9 initial transfer. That's all we need to  
10 know. So if it is true that each withdrawal  
11 was deposited into Train Klan's bank account,  
12 then that's what the stipulation should say.  
13 If the -- if it was deposited into some other  
14 account, we need to know that.

15 MS. CHAITMAN: And why would that --  
16 why would you be -- see, again, let's  
17 assume -- and I don't know the fact. Let's  
18 assume that it was deposited into one of the  
19 partners' accounts. That partner then would  
20 be a subsequent transferee. Why would --

21 THE ARBITRATOR: No, not if it's a  
22 general partner.

23 MS. CHAITMAN: Okay.

24 THE ARBITRATOR: But it really doesn't  
25 matter to my mind, dealing with Train Klan

1 specifically, whether the check was cut to  
2 the partnership, to the general partner or  
3 even to a limited partner, who the trustee  
4 might view as a subsequent transferor.

5 In any of those circumstances, the  
6 partnership and the general partner are on  
7 the hook for whatever the legal consequences  
8 of the transaction are.

9 MR. HUNT: Assuming it's a  
10 partnership.

11 THE ARBITRATOR: Assuming it's a  
12 partnership, yes.

13 So maybe -- maybe we have to see how  
14 many of the cases this resolution solves the  
15 problem for.

16 Do you have any sense, Ms. Chaitman,  
17 as to how many of your cases involve  
18 transferor accounts where money's transferred  
19 from Account A to Account B as part of the  
20 Exhibit B calculation?

21 MS. CHAITMAN: Well, I'm not following  
22 you. Because each account holder had a bank  
23 account and --

24 THE ARBITRATOR: I'm not talking about  
25 bank accounts. I'm talking about the



1 Madoff -- well, let me phrase it a different  
2 way.

3 Do you know how many of the Exhibit Bs  
4 in terms of deposits implicate earlier  
5 accounts which are transferor accounts and,  
6 therefore, to your mind, complicate the  
7 accounting and what you can stipulate to?

8 MR. JACOBS: I think, your Honor,  
9 you're referring to inter-account transfers.

10 THE ARBITRATOR: Yes.

11 MR. JACOBS: So how many cases  
12 implicated inter-account transfers?

13 THE ARBITRATOR: Yes.

14 MS. CHAITMAN: I haven't counted them,  
15 but a lot.

16 MR. JACOBS: I haven't counted either,  
17 but there's a good portion. I would say at  
18 least roughly half.

19 THE ARBITRATOR: Okay.

20 MS. CHAITMAN: But not -- I don't  
21 believe any of the three that we're talking  
22 about; Benjamin, DiGiulian or Train Klan.

23 THE ARBITRATOR: Right. Well, I guess  
24 then the question is, even though it's not  
25 before me today, should we deal with what, if

1 anything, can be stipulated to with regard to  
2 those other accounts? I'm content to leave  
3 that for another day. You tell me.

4 MS. CHAITMAN: You know, Judge, we  
5 have so many things before us. And I just  
6 think we'd be doing it in the abstract.

7 THE ARBITRATOR: Okay.

8 MR. JACOBS: Our position, your Honor,  
9 is we provided voluminous documentation as to  
10 all of our claims, whether there are bank  
11 records or not. And many of the factual  
12 issues are in, uniquely, the possession of  
13 the defendants.

14 And no matter what period of time  
15 they're from, the defendants have an  
16 obligation to have preserved those records  
17 when they were on notice of the litigation.  
18 And they have an obligation to do their own  
19 investigation as to the factual circumstances  
20 of our Exhibit B, regardless of the period of  
21 time.

22 And they should be required to answer  
23 our discovery as to their position as to each  
24 deposit and withdrawal and our net equity  
25 calculation whether there was an

1 inter-account transfer or not.

2 THE ARBITRATOR: But it's not before  
3 me today, so let's move on to whatever it is  
4 Mr. Hunt next wants to talk about.

5 MR. JACOBS: Okay.

6 MR. HUNT: I think we have  
7 Interrogatory No. 5 pretty well nailed down.

8 THE ARBITRATOR: Thank you.

9 MR. HUNT: For Interrogatory No. 6, we  
10 asked them to identify people with knowledge.  
11 Other than the BLMIS people, we didn't get a  
12 single person. And we didn't get that in the  
13 initial disclosures either. So there must be  
14 someone we can talk to about this account.

15 THE ARBITRATOR: Yes, I agree. That  
16 has to be -- you don't even say the account  
17 holder, assuming that person is alive and not  
18 an entity, has knowledge. And those answers  
19 clearly are deficient to my mind.

20 MS. CHAITMAN: Okay.

21 MR. HUNT: Interrogatory No. 7, I  
22 think I would like to withhold that one  
23 because it falls into this whole category  
24 of --

25 THE ARBITRATOR: Indirect.

1 MR. HUNT: Yes. But I would just  
2 point out that, with respect to Interrogatory  
3 No. 7, when we asked them what entity  
4 received the funds withdrawn from the  
5 account, they say they're unable to do so.  
6 That, of course, can't be true. Someone --

7 THE ARBITRATOR: It's going to get  
8 solved by the stipulation.

9 MR. HUNT: I think that's right, for  
10 the most part.

11 Just going back down my list based on  
12 the stipulation to see.

13 Interrogatory No. 10 --

14 MS. CHAITMAN: If I can just  
15 interject, you know, for the period from  
16 December 1998 on, the trustee has the front  
17 and back of every check. So the trustee has  
18 that information. The clients in general  
19 don't have records going back that far. The  
20 trustee has those records. So he doesn't  
21 need me to --

22 THE ARBITRATOR: Well, again, it's  
23 solved by the stipulation, which may be in  
24 some instances wrong, using my Bar Mitzvah  
25 example. But if you stipulated that the

1 account holder got the initial check, that  
2 solves the problem.

3 MS. CHAITMAN: Right, but the trustee  
4 has those records.

5 THE ARBITRATOR: I understand that.

6 You were talking, Mr. Hunt, about  
7 number 10.

8 MR. HUNT: I think I'll go ahead and  
9 pass on 10 at this point in time.

10 THE ARBITRATOR: I was about to say  
11 10 -- just so you understand what we're  
12 talking about, Ms. Chaitman -- deals with  
13 where have you banked.

14 But it seems to me your entitlement to  
15 that information goes out the window with the  
16 stipulation.

17 MR. HUNT: It's a narrow window, but I  
18 would agree with you on that.

19 With respect to Interrogatory No. 13,  
20 they say they're withdrawing that defense.  
21 I'd just like the order to reflect that is,  
22 in fact, the case so it doesn't come up again  
23 at trial. This has to do with the setoff --

24 THE ARBITRATOR: Why don't I simply  
25 say that any affirmative defenses that are

1 withdrawn may not be reasserted at trial.

2 MR. HUNT: Okay. That's fine.

3 MS. CHAITMAN: Yes.

4 MR. HUNT: That are withdrawn in this  
5 set of interrogatories.

6 THE ARBITRATOR: I can make it more  
7 generic. Any affirmative defenses that are  
8 withdrawn, whether it's in these three cases  
9 or --

10 MR. HUNT: Or in a letter that they  
11 sent us or whatever?

12 THE ARBITRATOR: Sure.

13 MR. HUNT: Okay. So in this  
14 particular one then, Interrogatory No. 14, I  
15 think they have withdrawn that affirmative  
16 defense.

17 THE ARBITRATOR: Right.

18 MR. HUNT: Correct?

19 MS. CHAITMAN: Yes.

20 MR. HUNT: Interrogatory No. 15, I  
21 think they've withdrawn that affirmative  
22 defense; correct?

23 MS. CHAITMAN: Which one is that?

24 MR. HUNT: "Trustee's claims are  
25 barred, in whole or in part, for failure to



1 properly credit inter-account transfers,  
2 profit withdrawals and other adjustments."

3 MS. CHAITMAN: This was --

4 THE ARBITRATOR: I don't think they  
5 have, if I'm looking at the right paperwork.  
6 It says, "The trustee has admitted that  
7 Madoff's records are permeated with fraud,  
8 therefore, they cannot possibly be reliable  
9 and/or admissible."

10 You're saying, based on the stip --

11 MR. HUNT: Yes, I think based on the  
12 stipulation, they've withdrawn that  
13 affirmative defense.

14 MS. CHAITMAN: No, because it's only  
15 as to the specific deposits and withdrawals.  
16 You know, I'm not waiving the right to object  
17 to the admission of other records that the  
18 trustee may seek to put into evidence at  
19 trial.

20 THE ARBITRATOR: And this is an  
21 example of the boilerplate because it talks  
22 about inter-account transfers, but there are  
23 no inter-account transfers in Train Klan.

24 MR. HUNT: There are no profit  
25 withdrawals and no adjustments. So it seems

1           either they need to withdraw the defense or  
2           answer the interrogatory.

3           THE ARBITRATOR: Unless you can tell  
4           me why that's wrong, Ms. Chaitman, I'm  
5           inclined to agree with that.

6           MS. CHAITMAN: Well, I'd like to think  
7           about that. Because I don't want to waive  
8           the right to object to the admission of  
9           evidence at trial that is unreliable and -- I  
10          don't want to have a blanket waiver. I can  
11          reword that affirmative defense, but I don't  
12          want to waive that.

13          THE ARBITRATOR: Well, unless you  
14          convince me otherwise, I do think that the  
15          stipulation, as a practical matter, means  
16          that Judge Bernstein won't hear argument as  
17          to anything that relates to Columns 1 through  
18          5 of Exhibit B.

19          And, conceivably, since there would be  
20          a lot of these trials, he may not hear  
21          evidence from the trustee about it either. I  
22          suppose there are experts whom the trustee  
23          contemplates offering as to the accuracy of  
24          the records, but I can envision a scenario  
25          where Judge Bernstein says, I don't need to

1           hear that because I have the stipulation, and  
2           you move on from there.

3                   MR. HUNT: As long as the affirmative  
4           defense is in place, the stipulation's not  
5           fully effectuated. Because she claims that  
6           there are some -- something to do with the  
7           account that she disagrees with because  
8           they're not properly credited to the account.

9                   So -- I mean, I know you don't have it  
10          in front of you, Ms. Chaitman, but it's clear  
11          that this particular affirmative defense  
12          is -- directly relates to the stipulation  
13          that we just made.

14                   THE ARBITRATOR: It's the 27th;  
15          correct?

16                   MR. HUNT: Yes, sir.

17                   THE ARBITRATOR: Here. Let me show it  
18          to you.

19                   MS. CHAITMAN: Thanks. I didn't bring  
20          my binder.

21                   THE ARBITRATOR: It continues on the  
22          other side.

23                   (Pause from the record.)

24                   MS. CHAITMAN: Okay. I would agree  
25          that that is out.

1 MR. HUNT: Okay. So Interrogatory  
2 No. 16, they've withdrawn that affirmative  
3 defense, so that's good.

4 Interrogatory No. 17, again, I think  
5 based on the stipulation that we've just  
6 received, that that is an example of one of  
7 the defenses that would be withdrawn.  
8 Because she says that we failed to properly  
9 credit defendants with all of defendants'  
10 deposits.

11 MS. CHAITMAN: I agree about that.

12 MR. HUNT: Okay. Just to be clear,  
13 the 46th affirmative defense is withdrawn;  
14 correct?

15 MS. CHAITMAN: Yes.

16 MR. HUNT: Okay. Interrogatory  
17 No. 18, we ask for parties who have knowledge  
18 of the deposits and possess documents.

19 THE ARBITRATOR: Wouldn't that become  
20 irrelevant by virtue of the stipulation?

21 MR. HUNT: Maybe. How about we  
22 withhold on that, see what we get back from  
23 them with respect to the answer to the  
24 interrogatory, whether they identify a person  
25 with knowledge.

1 MS. CHAITMAN: The point is, if we're  
2 conceding it, why would you need to take  
3 discovery? What's the benefit of conceding  
4 if we're going to then have discovery on it?

5 MR. HUNT: There's still affirmative  
6 defenses pled.

7 MS. CHAITMAN: We just waived the  
8 specific affirmative defense.

9 THE ARBITRATOR: That's a different  
10 issue. It may be that there are narrower  
11 areas where a deposition or other discovery  
12 could be taken, but let's not deal with that  
13 in the abstract.

14 MR. HUNT: So I mean, I think  
15 identifying persons with knowledge is -- and  
16 who have documents is perfectly acceptable  
17 discovery. We have the right to know who we  
18 might be faced with at trial.

19 THE ARBITRATOR: Except you asked for  
20 information concerning any transfers,  
21 deposits or subsequent transfers.

22 MR. HUNT: And I agree that's not part  
23 of the deal. I withdraw that.

24 THE ARBITRATOR: But I think that's  
25 answered adequately by Interrogatory No. 6,

1 which is "Identify any person with knowledge  
2 of any transfer" --

3 MR. HUNT: You and I are on the same  
4 page with that. That's exactly what I was  
5 saying. I would withhold asking for any more  
6 information about this depending on the  
7 quality of the information we get with  
8 respect to Interrogatory No. 6.

9 THE ARBITRATOR: Okay.

10 MR. HUNT: That concludes the reading  
11 for today with respect to these  
12 interrogatories.

13 THE ARBITRATOR: Okay. With respect  
14 to Train Klan. Don't make it sound better  
15 than it is.

16 MR. HUNT: That's why I put the caveat  
17 in there at the end. So we also have  
18 document requests for Train Klan. Maybe we  
19 could take a short break and let me look at  
20 this based on the stipulation --

21 THE ARBITRATOR: Sure.

22 MR. HUNT: -- see if there's some --  
23 we can streamline this a little bit.

24 THE ARBITRATOR: Absolutely. I'm sure  
25 we'd all be in favor of that.

1 (Recess from the record.)

2 THE ARBITRATOR: What's next,  
3 Mr. Hunt?

4 MR. HUNT: The document request in the  
5 Train Klan matter, we took a short break and  
6 I think we've eliminated the need for a  
7 number of these, but I do want to go through  
8 a few of them.

9 THE ARBITRATOR: Sure.

10 MR. HUNT: Some of them I think you  
11 sort of already ruled on, but just to be  
12 clear.

13 Document Request No. 1 asks for  
14 organizational documents relating to the  
15 partnership agreements or document with  
16 equivalent function of partnership agreement  
17 and any amendments to those agreements.

18 I think you've already ruled that  
19 we'll get those; correct?

20 THE ARBITRATOR: Well, let me phrase  
21 it this way: I made a ruling with respect to  
22 it, and my order will correspond to my  
23 ruling.

24 MR. HUNT: Okay.

25 THE ARBITRATOR: So I think I dealt



1 with it.

2 MS. CHAITMAN: Yeah, let's not repeat  
3 the --

4 THE ARBITRATOR: Right.

5 MS. CHAITMAN: Because we're going to  
6 rely on the transcript.

7 MR. HUNT: I just want to make it  
8 clear.

9 Document Request No. 3 talks about  
10 minutes of partnership meetings, resolutions,  
11 agreements and policies concerning the  
12 account, which I think falls into that  
13 similar category. I would withdraw that.

14 THE ARBITRATOR: In effect, I'm  
15 disallowing that one for the time being  
16 except to the extent that it falls within  
17 what I described earlier.

18 MR. HUNT: Falls within what? Just to  
19 make clear.

20 THE ARBITRATOR: My ruling with  
21 respect to the documents you get with respect  
22 to the partnership, assuming there are such  
23 documents. But if they were, for example,  
24 investment policies, I'm denying that request  
25 and the other elements of this without

1 prejudice to a later application.

2 MR. HUNT: I agree with that. That's  
3 fine.

4 And then Document Request No. 4,  
5 taking out the word "and limited," we are  
6 looking for all general partners, current and  
7 former.

8 THE ARBITRATOR: I think 4 is  
9 virtually what my ruling was because it says,  
10 Ms. Chaitman -- well, it says, "all  
11 documents." I would take out "all" and say  
12 "documents sufficient to show all general  
13 partners of the partnership."

14 MR. HUNT: It actually says that, "all  
15 documents sufficient to show."

16 THE ARBITRATOR: I'm taking out the  
17 word "all."

18 MS. CHAITMAN: So if there's one  
19 document --

20 THE ARBITRATOR: Let's assume this  
21 was -- and it's not, but let's assume this  
22 was Baker & Hostetler, assuming it's a  
23 partnership. I would not be allowing all  
24 documents sufficient to show who the partners  
25 are, but just some documents sufficient to

1 show --

2 MR. HUNT: I absolutely agree with  
3 that and acknowledge it.

4 The next one is Document Request  
5 No. 9, documents sufficient to identify any  
6 money, property or anything else of value  
7 provided by you to BLMIS in exchange for any  
8 initial transfer.

9 They say we have no legitimate  
10 interest in any such documents. First of  
11 all, we're asking about initial transfers.

12 And, second, with respect to the  
13 affirmative defenses, they have Affirmative  
14 Defense No. 3, which says that the defendants  
15 gave reasonably equivalent value in exchange  
16 for the transfers, and Affirmative Defense  
17 No. 4, which relates to the antecedent debt  
18 defense.

19 So as long as those defenses are still  
20 pled and the issue of value given with  
21 respect to the initial transfers is still an  
22 issue, then we have a right to receive those  
23 documents.

24 MS. CHAITMAN: Well, if I'm  
25 stipulating to the deposits, I don't

1 understand why we have to produce them.

2 What's the point of stipulating to them?

3 THE ARBITRATOR: Is there a difference  
4 between initial transfer and initial  
5 deposits?

6 MR. HUNT: The initial transfer is the  
7 withdrawal. It can be the withdrawal. So  
8 they're saying that they gave value for the  
9 withdrawals. That's how I read their  
10 affirmative defense, unless it says something  
11 different. I mean, either they withdraw  
12 those affirmative defenses or produce the  
13 documents related to them.

14 MS. CHAITMAN: The document related to  
15 the withdrawal is the check from Madoff,  
16 which the trustee has. We're stipulating  
17 that we got those withdrawals.

18 MR. HUNT: I know that you don't have  
19 the document in front of you, but the defense  
20 that you assert is that the defendants gave  
21 value to BLMIS in exchange for the  
22 withdrawal. So --

23 MS. CHAITMAN: Yeah, and I'm not  
24 waiving that. That's 548(c).

25 MR. HUNT: We want to know what value

1           they gave.

2                   MS. CHAITMAN: That's -- the value is  
3           they gave the money. I'm not waiving an  
4           affirmative defense which exists under the  
5           statute.

6                   THE ARBITRATOR: And I think I agree  
7           with Ms. Chaitman. I just want to see where  
8           the definition of initial transfer is.

9                   MR. JACOBS: That defense has also  
10          been dismissed by Judge Bernstein. So it's  
11          not applicable any longer to the case.

12                  MS. CHAITMAN: It is on appeal and I'm  
13          not waiving it.

14                  MR. JACOBS: But it's not currently  
15          applicable in the case.

16                  THE ARBITRATOR: Well, then let me  
17          interrupt you for a second and say, why are  
18          we talking about it?

19                  MR. JACOBS: We're talking about it  
20          because I think we have a right to know if  
21          there's another basis of value that's being  
22          asserted other than just having made deposits  
23          into the account. So was there -- were there  
24          other monies provided that aren't reflected  
25          in Exhibit B? Was a car given as a gift to

1 Mr. Madoff's grandchildren? Anything of that  
2 sort I think is the point.

3 MR. HUNT: So if the answer said that  
4 the only value that the parties allege is the  
5 deposit, then I'm fine with not asking for  
6 documents about that.

7 THE ARBITRATOR: I didn't have the  
8 presence of mind to write down what the  
9 stipulation as modified was, but it certainly  
10 talked about will not challenge the  
11 correctness. If we add the word  
12 "completeness" in there, so that Ms. Chaitman  
13 will not, on behalf of her clients, where  
14 applicable, challenge the completeness of  
15 Columns 1 through 5 of Exhibit B, seems to me  
16 that would obviate your concern and I think  
17 is already implicit in what --

18 MS. CHAITMAN: I agree.

19 THE ARBITRATOR: -- you said.

20 MS. CHAITMAN: I agree.

21 MR. HUNT: I agree.

22 THE ARBITRATOR: Okay. So --

23 MR. HUNT: Thank you.

24 THE ARBITRATOR: Okay.

25 MR. HUNT: So the next one that comes

1 up is Request No. 13 as it relates to  
2 affirmative defenses asserted in defendants'  
3 answer to the complaint. They say that such  
4 documents will be produced. Modifying this  
5 request to say any of the affirmative  
6 defenses that have not been withdrawn, we  
7 would like them to go ahead and produce the  
8 documents.

9 THE ARBITRATOR: I'm lost. You were  
10 talking about 13.

11 MR. HUNT: Yes.

12 THE ARBITRATOR: I'm looking at the  
13 partnership responses. And it's -- 13 says,  
14 "The articles of incorporation, memoranda of  
15 association" --

16 MR. HUNT: Okay. I'm looking at the  
17 individual. So they're slightly different,  
18 maybe.

19 THE ARBITRATOR: Okay.

20 MR. HUNT: Yeah, there's only two  
21 different ones. One is 12, so that's why the  
22 numbering is off a little bit. So on the  
23 partnership, I want --

24 THE ARBITRATOR: Forgetting the  
25 numbering for the moment, is the text the



1 same?

2 MR. HUNT: Yes, sir.

3 THE ARBITRATOR: So tell me what it  
4 says and I'll find it in the one I'm looking  
5 at.

6 MR. HUNT: "Documents you contend  
7 support any denials of fact or affirmative  
8 defenses asserted in defendants' answer to  
9 the complaint."

10 And their response was, "Any such  
11 documents shall be produced."

12 So no documents have been produced.  
13 Then modifying this request to say, "any  
14 remaining denials of fact or any remaining  
15 affirmative defenses," we'd like them to  
16 produce the documents.

17 MS. CHAITMAN: I'm not following you.  
18 You're changing the -- the document demand?

19 MR. HUNT: Yes, I'm clarifying it  
20 based upon the stipulation.

21 THE ARBITRATOR: He's narrowing the  
22 demand to say except -- let me rephrase it --  
23 except to the extent that you've withdrawn  
24 affirmative defenses, produce the documents  
25 that support those affirmative defenses.

1 MS. CHAITMAN: But we've --

2 THE ARBITRATOR: And you've said you  
3 will --

4 MS. CHAITMAN: To the extent that we  
5 have them. And if we haven't produced them,  
6 we don't have them, so --

7 THE ARBITRATOR: Okay. Then  
8 anticipating what Mr. Hunt's going to say, I  
9 think that he wants some representation that  
10 there are none.

11 MR. HUNT: Agreed.

12 THE ARBITRATOR: So maybe I can deal  
13 with that with respect to Train Klan. And  
14 recognizing that there are 91 other cases  
15 that you have hanging out there, but in Train  
16 Klan, and maybe in the two other cases, if I  
17 say, shall produce any documents relating to  
18 the remaining affirmative defenses in the  
19 case within ten days or be barred from using  
20 such documents for any purpose --

21 MS. CHAITMAN: But aren't these  
22 documents in our possession? If we're going  
23 to be relying on documents that the trustee  
24 has in his possession or that we're obtaining  
25 from some third party --

1 THE ARBITRATOR: Sure. He's not  
2 interested in what he already has.

3 MS. CHAITMAN: Right.

4 THE ARBITRATOR: It's whatever you  
5 have. So it's essentially a drop-dead date.

6 MS. CHAITMAN: I have no problem with  
7 that.

8 THE ARBITRATOR: Okay.

9 MS. CARLISLE: With the caveat on  
10 that, within ten days or clearly indicate  
11 there are no such documents.

12 MR. HUNT: What he's saying is she  
13 produces them by whatever or she's barred  
14 from ever using them.

15 THE ARBITRATOR: Correct.

16 MS. CHAITMAN: Unless they're  
17 documents that I obtain from a third party or  
18 the trustee.

19 MR. HUNT: Any third-party documents  
20 that you obtain you're supposed to produce to  
21 us.

22 MS. CHAITMAN: If I haven't received  
23 them yet, when I produce them -- I can't  
24 produce them in 10 days if I serve a subpoena  
25 in 20 days.

1 THE ARBITRATOR: I --

2 MR. HUNT: I agree with that.

3 THE ARBITRATOR: Again, I'll try and  
4 incorporate those two caveats into my  
5 directive, and I'll make it applicable to all  
6 three of the cases that are the subject of  
7 the motion.

8 MR. HUNT: Okay. Thank you.

9 So the next one is -- I'm looking at  
10 the individuals. I may be off by one. May  
11 be 18 in the one you're looking at. But it's  
12 documents you contend support the 29th  
13 affirmative defense in which you contend the  
14 complaint fails to state a claim on which  
15 relief can be granted because it fails to  
16 sufficiently trace the funds at issue from  
17 BLMIS to defendants.

18 I think that --

19 THE ARBITRATOR: We don't need to, it  
20 seems to me, go affirmative defense by  
21 affirmative defense because the ruling  
22 applies to whatever affirmative defenses  
23 haven't been withdrawn.

24 MR. HUNT: That's true. And I just  
25 was going to say, with respect to this one, I

1 think it's probably one that should be  
2 withdrawn based upon the stipulation.  
3 Because it deals with tracing to the  
4 defendants. I guess if they haven't  
5 withdrawn it, then we'll get the documents.

6 THE ARBITRATOR: Right. Okay. And  
7 implicit in what Ms. Chaitman is saying, at  
8 least as to this one, it sounds like you're  
9 not going to be getting documents because  
10 there are none.

11 MS. CHAITMAN: We don't have them, but  
12 we'll be relying on trustee's documents.

13 MR. HUNT: Okay.

14 THE ARBITRATOR: Okay.

15 MR. HUNT: Document Request No. --

16 THE ARBITRATOR: Let me interrupt.

17 When you say you don't have them, I  
18 assume you've made a good-faith effort to get  
19 from your clients whatever documents they  
20 have.

21 MS. CHAITMAN: Yes, the clients don't  
22 have these records, Judge.

23 THE ARBITRATOR: Sure.

24 MR. HUNT: I think they do have some  
25 of them, but they just haven't produced them.

1 Because you say in this that you would  
2 produce them, and you haven't produced a  
3 single document. But what I've done --

4 THE ARBITRATOR: Well, no, it says,  
5 "any such documents will be produced," which  
6 doesn't say that there aren't documents. It  
7 says if there are documents, they'll be  
8 produced.

9 MR. HUNT: It's sort of slickly  
10 drafted, but either you have them and you  
11 produce them or you don't.

12 So Document Request No. 23, any  
13 documents you've received from any third  
14 party --

15 THE ARBITRATOR: We discussed that.

16 MR. HUNT: -- she says she will  
17 produce them if she has them.

18 I assume you don't have them at this  
19 point in time; is that correct?

20 MS. CHAITMAN: Right.

21 THE ARBITRATOR: Maybe here I can make  
22 a generic ruling again and say, unless  
23 otherwise directed, any documents received  
24 from third parties will be produced within  
25 ten days.

1 MS. CHAITMAN: Yeah. And if you could  
2 make that apply to the trustee as well,  
3 Judge, because we've had a real problem with  
4 the trustee subpoenaing third-party bank  
5 records and waiting six to eight weeks before  
6 they're delivered to me.

7 MR. HUNT: With respect to this case,  
8 I don't have any problem with that. I don't  
9 know about the other cases. But I do know we  
10 routinely produce documents back to the  
11 parties as soon as we get them.

12 THE ARBITRATOR: My initial reaction  
13 was to make it apply to both sides. I think  
14 the wording needs some tweaking unless I make  
15 it specific to these three cases, because, to  
16 use one of the other cases I have, if they  
17 got documents relevant to Ms. Crupi, which is  
18 not your case, they wouldn't have to produce  
19 them to you probably unless they relate to  
20 your case. But certainly with regard to  
21 these three cases, yes, I will make it apply  
22 to both sides.

23 MR. HUNT: Okay. And then the last  
24 one was the catch-all documents consulted in  
25 preparing responses to discovery. They say



1 any such documents will be produced, but we  
2 have not received any documents.

3 THE ARBITRATOR: But that falls within  
4 my generic ruling, which is put up or shut up  
5 within ten days.

6 MR. HUNT: Okay. The only issue  
7 there, though, is that gives them the option  
8 of deciding whether or not to give us a  
9 document that might be useful in our case.  
10 So I can see how that applies to affirmative  
11 defenses where they are going to be precluded  
12 from using the documents, but I still think  
13 that we have a right to see what evidence or  
14 what information they identified in  
15 responding to discovery, as a general matter.

16 THE ARBITRATOR: Except we've carved  
17 out certain areas. If, for example,  
18 Ms. Chaitman has file cabinets full of  
19 subsequent transfers to third- and  
20 fourth-generation transferees, that's not --  
21 that may be something she studied at length,  
22 which would be responsive to 28, but would  
23 not be something you're entitled to based on  
24 our discussion thus far this morning.

25 MR. HUNT: Right. So her answer said

1 that they're going to produce the documents.  
2 I'll modify this to say we don't want any  
3 subsequent transferee documents or any  
4 documents directly related to the  
5 transferees.

6 THE ARBITRATOR: She just said that  
7 she will produce them. And my ruling has  
8 been that any documents she's agreed to be  
9 produced must be produced within ten days.  
10 So if she has documents to produce, she will  
11 produce them within ten days.

12 MR. HUNT: Okay. I'm fine with that.  
13 Great. That's all I had on that, on  
14 Train Klan.

15 THE ARBITRATOR: Okay. Who's next?

16 MR. HUNT: Next is DiGiulian.

17 THE ARBITRATOR: Okay.

18 MR. HUNT: So turning to the  
19 interrogatories in DiGiulian, Interrogatory  
20 No. 1 says, "Identify the reasons for the  
21 transfers."

22 She says that "Withdrawals were taken  
23 to pay applicable taxes, unreported  
24 short-term capital gains in the account and  
25 for the living expenses of Bruno DiGiulian."

1                   They provide no detail about the  
2                   applicable taxes that were paid, nor for the  
3                   living expenses.

4                   THE ARBITRATOR: I guess the answer --  
5                   putting aside the interrogatory, but the  
6                   answer relates to the defense, which I think  
7                   Judge Bernstein has stricken, which is, we're  
8                   entitled to a credit for taxes paid.

9                   Do I have that right, Ms. Chaitman?

10                  MS. CHAITMAN: I don't believe that he  
11                  struck it. I think that, in one case, he's  
12                  ruled that defendant is not entitled to a  
13                  credit, but, of course, we've asserted that  
14                  as an affirmative defense and we're going to  
15                  take it up.

16                  THE ARBITRATOR: Right. But at the  
17                  moment -- I wasn't sure whether it was him or  
18                  a district judge, but at the moment, his view  
19                  is, in part, because each defendant has his  
20                  own unique tax situation or other expenses,  
21                  that they could claim that that's not a  
22                  credit that one of your clients can take.

23                  Are we on the same page with regard to  
24                  that?

25                  MS. CHAITMAN: Yes. He's ruled that

1 way in one case, yes.

2 THE ARBITRATOR: So given that, I'm  
3 not sure why -- unless Ms. Chaitman prevails  
4 on appeal, why the reason for each transfer  
5 is relevant.

6 MR. HUNT: But is she withdrawing the  
7 offset defense in this case?

8 MS. CHAITMAN: No, because -- here's  
9 the thing: I am going to go up on appeal on  
10 any issue on which I lose. I can't withdraw  
11 it; right? I'm not withdrawing it. I'm  
12 just -- I want to preserve it for appeal.

13 MR. HUNT: So if the defense is still  
14 in the case --

15 THE ARBITRATOR: But it's not in the  
16 case. It's -- if it comes back into the case  
17 before trial because a district judge says  
18 that Judge Bernstein erred, then we'll deal  
19 with that. But at the moment, you're asking  
20 for -- let me give you an analogy.

21 If this were a commercial case and  
22 there were three claims in the complaint and,  
23 at the motion to dismiss stage, a district  
24 judge dismissed Claims 2 and 3, your argument  
25 by analogy would be I still get discovery on

1 Claims 2 and 3 because Ms. Chaitman has said  
2 she intends to appeal that at the end of  
3 case. So that doesn't make any sense.

4 MR. HUNT: Your analogy may be a  
5 little off, though, because she's saying that  
6 happened in another case, but it doesn't  
7 apply to this case, I think is what she's  
8 saying. That's what I heard her say.

9 THE ARBITRATOR: Is that what you're  
10 saying?

11 MS. CHAITMAN: There's no -- well,  
12 Judge Bernstein did not rule for all the  
13 cases. He ruled in one case.

14 THE ARBITRATOR: Right.

15 MS. CHAITMAN: And I'm confident he'll  
16 rule exactly the same way in every other  
17 case.

18 THE ARBITRATOR: Right.

19 MS. CHAITMAN: But I should add one  
20 other thing --

21 THE ARBITRATOR: You're not trying to  
22 be the Artful Dodger by saying, well, it only  
23 applies to that case --

24 MS. CHAITMAN: No, I mean, I can't  
25 imagine Judge Bernstein -- maybe he would

1 change his mind, but I don't think he would.

2 But the thing is that -- I want to  
3 point out that in each of my cases, what I am  
4 doing is submitting an accountant's affidavit  
5 as to exactly what the taxes paid were. So  
6 they're getting that information, but they're  
7 getting it through an accountant's affidavit.  
8 We've been supplying those in a timely  
9 manner.

10 THE ARBITRATOR: But -- and that deals  
11 with a document request rather than an  
12 interrogatory. But I think one of the things  
13 that the trustee said in his papers is that  
14 they're entitled to those underlying  
15 documents in the earlier stage.

16 I'm not sure how it really helps you,  
17 getting it at the earlier stage, but I don't  
18 disagree with you that you're entitled to it.  
19 It's, in effect, that which the accountant  
20 would rely on.

21 MS. CHAITMAN: Well, we're viewing it  
22 pretty much as an expert's report. We're  
23 redacting -- the trustee's only entitled to  
24 the information on the tax return which  
25 relates to the Madoff income. So it's a

1 laborious process of redacting the tax  
2 returns.

3 And that's what we're doing. And  
4 we're doing it in the form -- producing these  
5 declarations. So we're producing it. We're  
6 just not producing it in the first stage.

7 MR. HUNT: Are you going to produce  
8 one in this case?

9 MS. CHAITMAN: We're producing  
10 declarations in each of the cases. You've  
11 gotten a lot of them already.

12 MR. HUNT: As long as the order says  
13 that when a declaration comes, the underlying  
14 documents supporting it are produced --

15 MS. CHAITMAN: In a redacted form,  
16 which is -- it just shows the --

17 MR. HUNT: I don't --

18 MR. JACOBS: There's no redaction for  
19 relevance permitted under the case law rules,  
20 to my knowledge.

21 THE ARBITRATOR: Well, typically there  
22 would not be. There are confidentiality  
23 orders obviously in all of these cases. By  
24 the same token, if Mr. DiGiulian has  
25 \$10 million in earned income, I'm not sure



1 that's relevant to anything that the trustee  
2 is concerned with.

3 MR. JACOBS: It may or may not be,  
4 your Honor, but we went through this exercise  
5 with Ms. Chaitman concerning the Rule 35 bank  
6 records where she attempted to unilaterally  
7 redact out transactions that weren't related  
8 to the BLMIS account.

9 And the judge explicitly overruled  
10 that because, until we see the information,  
11 we can't make a fair determination as to  
12 whether it's relevant or not, given the  
13 nature of the defenses that have been  
14 asserted. And there is a confidentiality  
15 protective order in place that will protect  
16 from the disclosure any of that confidential  
17 information outside of use in the litigation.  
18 So it -- it's not a valid concern.

19 THE ARBITRATOR: Did I hear  
20 Ms. Chaitman say you've already gotten --

21 MR. HUNT: We haven't gotten any of  
22 the underlying documents.

23 MS. CHAITMAN: They haven't gotten the  
24 documents yet, but the thing is --

25 THE ARBITRATOR: Give me sort of a

1 timeline. When did you get the first of the  
2 accountants' reports?

3 MS. CARLISLE: I believe I've received  
4 three of them, only one of the cases. And  
5 I'm not a hundred percent sure it's the  
6 Gordon case. There are two cases against  
7 Ms. Gordon. The first ones I received were  
8 probably in August --

9 MS. CHAITMAN: I don't remember.

10 MS. CARLISLE: -- or September. The  
11 other two cases, fact and expert discovery is  
12 currently closed. These cases are much --  
13 are further along. And they were  
14 one-to-two-page declarations from the  
15 accountants just setting forth the amount of  
16 taxes purportedly paid by these individuals.

17 MR. JACOBS: That's the problem with  
18 the reports, your Honor; they're hearsay.  
19 Because none of the other underlying  
20 documents or source information is provided.  
21 One of the affidavits, it's not in any of the  
22 cases before your Honor today, actually says  
23 that the information provided in the  
24 affidavit was based on discussions with  
25 defendant from recollection. It's really --

1 it's rather egregious.

2 And the first one we ever received was  
3 served on us after expert discovery had  
4 closed. So whether it's even fairly  
5 considered in the case is a full separate  
6 argument that we don't need to delve into  
7 today.

8 But the fact of the matter is that all  
9 of these underlying documentation, including  
10 the taxes, must be produced in fact discovery  
11 in each of these cases, regardless of whether  
12 an affidavit is supplied by a fact witness or  
13 a purported expert witness of any sort. And  
14 that's a pretty standard discovery --

15 THE ARBITRATOR: As a general rule, I  
16 agree with you, but I'm not unsympathetic to  
17 what Ms. Chaitman is saying, which is -- she  
18 hasn't said this, but I think what she's  
19 trying to say is that, until my expert issues  
20 his -- assuming it's a he -- his report, I  
21 don't know what documents I'm supposed to be  
22 producing; and, conversely, I'm not sure that  
23 you're really prejudiced by getting the  
24 documents with the report, although you  
25 haven't been getting it with the report thus

1 far.

2 MR. JACOBS: Right.

3 MS. CHAITMAN: And the other thing --

4 THE ARBITRATOR: And I suppose the way  
5 in which you might be prejudiced is if that  
6 occasions a need to depose that particular --

7 MR. JACOBS: Right.

8 THE ARBITRATOR: -- defendant. But if  
9 there are documents produced in expert  
10 discovery that conceptually should have been  
11 produced in fact discovery, obviously, I  
12 would look favorably on a request to depose  
13 that defendant out of time.

14 MR. JACOBS: Right. Just a point of  
15 confusion. These aren't expert reports.  
16 They're entirely factual in nature. There's  
17 no expert analysis. There's no purported  
18 expert qualification. There's no disclosures  
19 made under Rule 45 as that would be required  
20 in connection with the designation of any  
21 expert. They're not being submitted in a  
22 timely fashion on -- prior to the expert  
23 disclosure dates, as required under the case  
24 management orders.

25 So it's essentially the defendant has

1           said, I'm just going to force upon the  
2           trustee a hearsay affidavit on factual issues  
3           without any underlying documentation whenever  
4           I want without regard to the rules or the  
5           judge's orders. And --

6                   THE ARBITRATOR: It also relates to an  
7           affirmative defense, which at the moment is  
8           not in the case.

9                   MR. JACOBS: Well, your Honor, it's in  
10          the case until -- in my view, it's in the  
11          case until we have either Ms. Chaitman  
12          withdraws it affirmatively or we have a court  
13          order dismissing it from the case.

14                   THE ARBITRATOR: Ms. Chaitman concedes  
15          that -- unless she comes up with another  
16          argument that sways Judge Bernstein, that  
17          he's going to make the same ruling throwing  
18          out the tax credit affirmative defense --

19                   MR. JACOBS: Right.

20                   THE ARBITRATOR: -- in all of her  
21          cases.

22                   MR. JACOBS: If it's not in the case,  
23          your Honor, why should the defendant be  
24          allowed to enter into evidence supporting it  
25          into the factual record if it's not in the

1 case? It's the same argument that  
2 Ms. Chaitman makes that we're not allowed to  
3 take discovery to frame a complaint. Right?  
4 I mean --

5 THE ARBITRATOR: Let me --

6 MR. JACOBS: It's in the case or it's  
7 not I guess is the contention we're grappling  
8 with here.

9 THE ARBITRATOR: Let me tell you the  
10 way in which I contemplate ruling on this,  
11 and then both sides can take pot shots at it,  
12 which is that any report by an accountant or  
13 expert relating to the tax credit affirmative  
14 defense must be accompanied by the unredacted  
15 underlying documents upon which the report  
16 relies.

17 MS. CHAITMAN: Well, I would quarrel  
18 with the unredacted portion of that because  
19 the only credit we're seeking is for the  
20 Madoff income.

21 THE ARBITRATOR: But --

22 MS. CHAITMAN: And the trustee's not  
23 entitled to information about the defendants'  
24 income other than that.

25 THE ARBITRATOR: Well, one of the

1 problems is the trustee may get a lot more  
2 stuff than he wants. Some of these people  
3 may have Trump-like returns.

4 MR. HUNT: Then they'll get nothing.

5 THE ARBITRATOR: Hmm?

6 MR. HUNT: Then they'll get nothing.

7 THE ARBITRATOR: Good point.

8 Hang on a second.

9 Off the record.

10 (Discussion off the record.)

11 THE ARBITRATOR: Back on the record.

12 I agree with what's been said about  
13 redactions for relevance typically not being  
14 allowed, but there are numerous potential  
15 schedules to tax returns which are wholly  
16 irrelevant and, both from a burdensomeness  
17 perspective and from a privacy perspective,  
18 I'm sympathetic to the defendants' desire to  
19 shield that from disclosure.

20 What I will require be produced in  
21 unredacted form, at the same time as an  
22 accountant's or expert's report relating to  
23 this affirmative defense, will be the first  
24 two pages of the tax return and any schedules  
25 or other attachments that relate specifically



1 to the Madoff capital gains in unredacted  
2 form.

3 Now, that doesn't deal with the  
4 reports you've gotten thus far, but my ruling  
5 with respect to that will be that, for  
6 reports you've gotten thus far, that that  
7 material be produced within ten days.

8 MR. HUNT: So I agree with all that.  
9 I just wanted to add some clarification.

10 In addition, any documents that the  
11 expert relied on, if he's being offered as an  
12 expert, right, just like you would in the  
13 normal rules.

14 MR. JACOBS: I think even more  
15 generally I would add, any documents that  
16 were -- that the -- any source material for  
17 any information that's included in the report  
18 should be disclosed in its entirety  
19 regardless of whether it's construed as an  
20 expert or an accountant's report; otherwise  
21 it's hearsay.

22 THE ARBITRATOR: Well, to take the  
23 example you gave, you said there's one report  
24 that seemed to rely on a conversation with  
25 the defendant, but --

1 MR. JACOBS: Right.

2 THE ARBITRATOR: -- if that  
3 conversation were a letter instead, you would  
4 want the letter.

5 MR. JACOBS: Right. Because a  
6 defendant can offer sworn testimony, and we  
7 can challenge the veracity or discredit on  
8 cross-examination just like we would at  
9 trial.

10 MR. HUNT: I would just say, you know,  
11 produce the documents that he's relying on  
12 and we can question --

13 THE ARBITRATOR: But he's relying  
14 potentially on tax returns, and I made a  
15 limited ruling with respect to the tax  
16 returns.

17 MR. HUNT: And I think the point then  
18 is --

19 THE ARBITRATOR: So I'm tacking on to  
20 the ruling as well as any additional  
21 documents upon which the expert has relied.

22 MR. HUNT: Okay. That's good.

23 THE ARBITRATOR: Any objection to  
24 that, Ms. Chaitman?

25 MS. CHAITMAN: No.

1 MR. JACOBS: Agreed, except for with  
2 the fact that it's construed as an expert,  
3 which I believe we will challenge.

4 THE ARBITRATOR: I will clean that up.  
5 It will say accountant or expert.

6 MR. JACOBS: And, your Honor, on the  
7 tax returns, can we clarify. I believe in  
8 addition to the taxes paid, any schedules  
9 specifically regarding the Madoff investment  
10 and any taxes paid on those capital gains, we  
11 would also be entitled to information  
12 concerning the defendants' both -- full scope  
13 of refunds in that same given year regardless  
14 of whether or not --

15 THE ARBITRATOR: You're getting the  
16 first two pages of the return.

17 MR. JACOBS: So I'm just --  
18 respectfully, without those in front of me, I  
19 can't verify all the information that that  
20 includes. I don't think I'm as familiar with  
21 them as you are. I'm just looking to confirm  
22 that that information would be reflected in  
23 the scope of the materials you've ordered are  
24 allowed.

25 I just want to confirm. Because the

1 refund is relevant. Whether the defendant  
2 got a refund on the taxes paid or used the  
3 tax liability to offset -- or a refund to  
4 offset liabilities in subsequent years is  
5 equally, from our perspective, relevant.

6 THE ARBITRATOR: I think you're  
7 getting what you want. Why don't you consult  
8 with somebody at your firm. And if there  
9 are -- if there's something additional that  
10 relates to that, send me a letter. And after  
11 Ms. Chaitman has had an opportunity to  
12 respond, I'll modify it.

13 MR. JACOBS: Perfect.

14 MR. HUNT: Once we get the first set  
15 of documents that will help; right?

16 THE ARBITRATOR: Right.

17 Off the record.

18 (Discussion off the record.)

19 THE ARBITRATOR: Back on the record.

20 MR. HUNT: I'd like to move to  
21 Interrogatory No. 3, "Identify each deposit  
22 into the account." They say, "Responding  
23 party is unable to do so. To the extent we  
24 have reliable third-party records, they will  
25 acknowledge the deposit."

1                   We've provided them with a large  
2                   number of third-party records. So I would  
3                   just ask that they amend this answer to  
4                   reflect that and then withdraw all the stuff  
5                   about riddled with fraud and all that other  
6                   stuff, if it's appropriate.

7                   THE ARBITRATOR: I'm looking at the  
8                   Answer to Interrogatory 8, which doesn't have  
9                   the "however" and "moreover" paragraphs, but  
10                  says, "Responding party does not dispute the  
11                  deposits and withdrawals reflected on  
12                  Exhibit B to the complaint," and then it has  
13                  the word "on," which is stuck in there for  
14                  some reason, but I assume it's just a typo.

15                  So I think what Ms. Chaitman was  
16                  trying to do was say, we're not disputing  
17                  Columns 1 through 5 of Exhibit B relating to  
18                  this defendant, but, independent of that, we  
19                  can't identify each deposit.

20                  You were saying there's an  
21                  inconsistency there.

22                  MR. HUNT: Exactly.

23                  THE ARBITRATOR: I think I understand  
24                  what she's trying to do, but I think the  
25                  stipulation which will apply to this case

1 obviates the need for an answer to that  
2 interrogatory.

3 MR. HUNT: Do we have that same  
4 stipulation with respect to this case?

5 THE ARBITRATOR: I thought we have it  
6 an all three of these.

7 MS. CHAITMAN: We agreed that we have  
8 it on all three of them. In each of these  
9 cases, we have agreed to the accuracy of  
10 Exhibit B.

11 THE ARBITRATOR: Right.

12 MR. HUNT: At Columns 1 through 5;  
13 right?

14 THE ARBITRATOR: Yes, but one of those  
15 is each deposit into the account.

16 MR. HUNT: Yes. Okay.

17 Interrogatory No. 4 asks for names of  
18 persons with knowledge. They did not give us  
19 any other than Madoff employees.

20 THE ARBITRATOR: We're going back over  
21 the same ground.

22 MR. HUNT: Right.

23 THE ARBITRATOR: Ms. Chaitman is going  
24 to provide you with the names of the people  
25 on her side of the beam.

1 MS. CHAITMAN: But in this case, Bruno  
2 DiGiulian is deceased. His wife had nothing  
3 to do with the account, so she has no  
4 knowledge. You know, I don't have any  
5 information to provide.

6 THE ARBITRATOR: That's fair.

7 MR. HUNT: Well, she does have  
8 knowledge. She signed the interrogatory  
9 responses and --

10 MS. CHAITMAN: She signed them because  
11 they had to be verified, and she was the only  
12 person who could verify it, but she couldn't  
13 verify any more information than we put in  
14 here. That's why we didn't put anything else  
15 in because this is all she could verify.

16 THE ARBITRATOR: And, also, it becomes  
17 irrelevant because transfer means withdrawals  
18 or does it also mean deposits?

19 MR. HUNT: It means both.

20 THE ARBITRATOR: But they've been  
21 stipulated to. So even if the entire Mormon  
22 Tabernacle Choir is familiar with them, it's  
23 irrelevant.

24 MR. HUNT: Well, I do think we have  
25 the right to know who the -- who their



1 accountants were and tax preparers and so  
2 forth. They have not given us a single name  
3 of people with knowledge, whether --

4 THE ARBITRATOR: I -- I disagree.  
5 Insofar as deposits and withdrawals have been  
6 stipulated to and cannot be challenged at  
7 trial, it really doesn't matter, as I've  
8 said, how many people or who has knowledge of  
9 those.

10 MR. HUNT: One of the things that they  
11 say in these interrogatory responses is that  
12 Bruno DiGiulian was the subsequent  
13 transferee, in Interrogatory No. 5. He was  
14 not. That's a legal argument. So I want to  
15 make it clear that they're not withholding  
16 information relating to Mr. DiGiulian on the  
17 basis that he's thought to be a subsequent  
18 transferee in the defendants' mind.

19 THE ARBITRATOR: Well, they're telling  
20 you Bruno got the money except --

21 MS. CHAITMAN: He got it as a  
22 subsequent -- because this was an IRA  
23 account. So there was a custodian and this  
24 is a legal argument.

25 THE ARBITRATOR: Right.

1 MS. CHAITMAN: It's --

2 MR. HUNT: So they need to, I think,  
3 identify who, in their mind, received the  
4 initial transfer.

5 MS. CHAITMAN: It says from Fiserv.

6 MR. HUNT: Where does it say that?

7 MS. CHAITMAN: "The account holder,  
8 Bruno L. DiGiulian, was the subsequent  
9 transferee from Fiserv of each transfer,  
10 except for withdrawals needed to pay  
11 applicable taxes."

12 MR. HUNT: So I think any information  
13 about communications between Fiserv and  
14 DiGiulian are irrelevant because DiGiulian is  
15 sued as the initial transferee here.

16 THE ARBITRATOR: Well, except this is  
17 only asking -- this is an interrogatory, not  
18 a document request. And I suppose she hasn't  
19 complied with the local rule. I'm not even  
20 sure if it's applicable in bankruptcy court,  
21 which makes "identify" a term of art, but  
22 unless you don't know who Fiserv is, it seems  
23 to me she's adequately answered this.

24 MR. HUNT: Okay.

25 THE ARBITRATOR: She may be wrong as a

1 matter of law or she may be right as a matter  
2 of law, but I think she's made it clear what  
3 the flow of the money was.

4 MR. HUNT: So just go to Interrogatory  
5 No. 9 where we ask them to identify  
6 communications about disagreements. And this  
7 is 9 and 10. She says she has no personal  
8 knowledge, but she believes such instances  
9 occurred.

10 THE ARBITRATOR: Again, it's not a  
11 document request.

12 MR. HUNT: It's just -- if she  
13 believes such instances occurred, then what's  
14 the basis of that belief?

15 THE ARBITRATOR: Well, if you want to  
16 pursue this, I suppose you could -- maybe  
17 she's one of the people -- I think she is --

18 MS. CHAITMAN: Yes.

19 THE ARBITRATOR: -- for the motion for  
20 a protective order, but absent that, you  
21 could depose her about whether she has any --

22 MR. HUNT: As long as we have the  
23 right to depose her, that's fine. We can  
24 leave it that way.

25 MS. CHAITMAN: Well, we've asked

1 for --

2 THE ARBITRATOR: We'll deal with that  
3 down the road. For the moment, I'm not going  
4 to worry about that.

5 MR. HUNT: Not going to worry about  
6 what?

7 THE ARBITRATOR: The however she  
8 believes such instances occurred. She hasn't  
9 identified any such instances, so the fact  
10 that her Ouija board told her that there were  
11 such instances does not mean that there's  
12 more detail for her to give you.

13 MR. HUNT: I think the Interrogatory  
14 No. 11 -- I think you've ruled that we get  
15 those forms and everything, so I think we're  
16 fine.

17 THE ARBITRATOR: Yes.

18 MR. HUNT: Interrogatory No. 12 I  
19 think is obviated by the fact that they've  
20 stipulated to everything in --

21 THE ARBITRATOR: In any case --

22 MR. HUNT: -- Exhibit B.

23 THE ARBITRATOR: We've gone through  
24 this already.

25 In any case where Ms. Chaitman enters

1 into the stipulation we've been discussing,  
2 the defense that defendants' liability was  
3 fraudulently calculated, which is the 20th  
4 affirmative defense, goes out the window.

5 MR. HUNT: And also the 27th  
6 affirmative defense; right? The next one  
7 down.

8 THE ARBITRATOR: Yes.

9 MR. HUNT: Okay. They have an  
10 affirmative defense in Interrogatory No. 14  
11 about the withdrawals were legally compelled  
12 by state and federal securities laws. And  
13 they say, see Interrogatory No. 11. Which  
14 will be based upon the responding party's  
15 testimony. So I guess as long as we get to  
16 depose her, we can wait and see what her  
17 testimony was.

18 THE ARBITRATOR: Whether you do or  
19 don't, and I'm not sure where I read it, but  
20 in IRA accounts, for people who are beyond 70  
21 1/2, whatever that magic time period is,  
22 Ms. Chaitman is saying they had to take the  
23 money out.

24 That's all you're saying.

25 MS. CHAITMAN: That's all I'm saying.

1 MR. HUNT: Then she can answer the  
2 interrogatory to explain to us what the  
3 reason is rather than just saying --

4 MS. CHAITMAN: Well, I'm saying it's  
5 legally compelled under the --

6 THE ARBITRATOR: Yeah, but maybe -- I  
7 think it's a fair point.

8 MR. HUNT: We're guessing at what  
9 she's saying at this point.

10 THE ARBITRATOR: Hang on a minute.  
11 You're not saying what I just said.  
12 And to the extent that what I just said is  
13 the accurate answer, I think you should  
14 modify each of these answers, where  
15 applicable, to say, whatever the right  
16 verbiage is, that sometime beyond 70 1/2,  
17 because it was an IRA account, the money has  
18 to be taken out in installments.

19 That's the factual basis; right?

20 MS. CHAITMAN: Right.

21 Can I do this in one document instead  
22 of in 92 documents?

23 THE ARBITRATOR: I'm inclined to say  
24 yes.

25 MS. CHAITMAN: Okay.

1 MR. HUNT: Okay. So that's all I had  
2 on the interrogatories.

3 THE ARBITRATOR: Okay.

4 MR. HUNT: You told us we'd start  
5 getting repetitive. You were right.

6 THE ARBITRATOR: Benjamin, is there  
7 anything --

8 MR. HUNT: We have document requests  
9 on DiGiulian, and I was going to suggest that  
10 maybe we take another break and let us go  
11 through that and see if we can streamline  
12 that. And also take a look at Benjamin to  
13 see if we can streamline it as well.

14 THE ARBITRATOR: Sure.

15 (Recess from the record.)

16 THE ARBITRATOR: What's next?

17 MR. HUNT: We left off with I think --  
18 correct me if I'm wrong, I think we left off  
19 with the DiGiulian request for production; is  
20 that right? The document request, yes,  
21 that's where we left off.

22 So just two points on that, and then I  
23 think we can move on.

24 I want to make sure that no documents  
25 are being withheld based on the presumption



1           that Bruno would be a subsequent transferee.  
2           Because he sued as an initial transferee. So  
3           can the defendants make that representation?

4                   MS. CHAITMAN: That no -- no  
5           documents -- what --

6                   MR. HUNT: Are being withheld based on  
7           the presumption that Bruno DiGiulian was a  
8           subsequent transferee.

9                   MS. CHAITMAN: Yes. We haven't  
10          withheld documents based on that.

11                  MR. HUNT: So as long as your Honor's  
12          order applies to this case, I didn't see  
13          anything different in there that led me to  
14          believe we needed to go over the document  
15          requests with any specificity.

16                  Looking at the next case, which was  
17          the Benjamin case --

18                  THE ARBITRATOR: Right.

19                  MR. HUNT: -- just to confirm, the  
20          defendants have stipulated to the accuracy of  
21          Columns 1 through 5 on Exhibit B in Benjamin;  
22          correct?

23                  THE ARBITRATOR: Correct?

24                  MS. CHAITMAN: Yeah, we've said that  
25          several times.

1 MR. HUNT: So based on that, I didn't  
2 see -- and the rest of the order would apply  
3 to this one, I didn't see anything different  
4 here that we needed to talk about.

5 THE ARBITRATOR: Great. So we're done  
6 with the trustee's motion; correct?

7 MR. HUNT: Yes, sir.

8 THE ARBITRATOR: Good.

9 MS. CHAITMAN: So would you like me to  
10 start on our motion to compel?

11 THE ARBITRATOR: Sure.

12 MR. HUNT: Is that on the Wilenitz  
13 case?

14 MS. CHAITMAN: I think it's easier to  
15 deal with the document demand that we served  
16 on all the other cases.

17 MS. CARLISLE: I request we give Ted a  
18 minute because he's handling Wilenitz so that  
19 he can be here -- physically here to hear  
20 what you have to say.

21 THE ARBITRATOR: We can do the motion  
22 for a protective order.

23 MS. CHAITMAN: Okay. Let's do that.

24 MR. HUNT: That's fine.

25 MS. CHAITMAN: Long as you don't need

1 Ted for that.

2 MR. HUNT: What's the other one you're  
3 thinking about?

4 MS. CHAITMAN: We served  
5 interrogatories -- excuse me -- yes --

6 MR. HUNT: That must be in the  
7 Wilenitz case.

8 MS. CHAITMAN: No, this is not. We  
9 served in Wilenitz. Then we --

10 MS. CARLISLE: Well, you served in --  
11 no, you said --

12 MR. HUNT: Just -- that's Ted's deal;  
13 right?

14 MS. CARLISLE: Sorry. Wilenitz is  
15 Ted's deal, yes.

16 MR. HUNT: I don't know what this is  
17 that she's got in front of us.

18 MS. CHAITMAN: We served document  
19 demands and interrogatories in one document,  
20 and we served it in about 60 cases. And then  
21 we moved to compel -- you responded and we  
22 moved to compel. And then that was assigned  
23 to Judge Maas.

24 MS. CARLISLE: The dispute was  
25 assigned to Judge Maas. As I understood it,

1 it was only the Wilenitz -- it was only  
2 assigned to Judge Maas in the Wilenitz case,  
3 not in the other -- I apologize. I don't  
4 know how many cases those were brought in.

5 MS. CHAITMAN: No, we agreed to have  
6 everything that was before Judge Bernstein  
7 assigned to Judge Maas.

8 MR. HUNT: Do you know what she's  
9 talking about?

10 THE ARBITRATOR: No.

11 MS. CARLISLE: Wilenitz.

12 MR. HUNT: Let's do the motion to  
13 quash and then figure out what's next.

14 THE ARBITRATOR: Off the record.

15 (Discussion off the record.)

16 MS. CHAITMAN: So if I could start --  
17 we made a motion to compel responses to our  
18 interrogatories and to compel the trustee to  
19 produce documents.

20 THE ARBITRATOR: In --

21 MS. CHAITMAN: It's defendants listed  
22 on Exhibit A to first set of requests. It's  
23 this one (indicating).

24 MR. JACOBS: Your Honor, we had a  
25 hearing with Judge Bernstein on this issue

1 where Judge Bernstein explicitly said that  
2 Ms. Chaitman's motion could go forward on  
3 Wilenitz only, even though she attempted to  
4 bring it across all --

5 THE ARBITRATOR: That's true, but he  
6 also said that the rulings would be of  
7 general application. Then he made tentative  
8 rulings.

9 MR. JACOBS: Right. And that's  
10 consistent with, I believe, the position we  
11 articulated earlier, which is that, in cases  
12 with identical factual or legal  
13 circumstances, we will apply those rulings.  
14 And we are cross-moving for a protective  
15 order prohibiting this discovery in this  
16 case. So if we obtain one, we would like  
17 that to apply in other cases as well.

18 But I think as you'll see when we get  
19 into the argument, there are some  
20 case-specific issues that might dictate  
21 results that might not happen the same way in  
22 other cases on certain requests.

23 THE ARBITRATOR: Does it make sense to  
24 just ignore those for the moment, deal with  
25 Wilenitz and then discuss how it applies

1 potentially --

2 MR. JACOBS: That's exactly how we  
3 would like to move forward, is to deal with  
4 Wilenitz. Because that's the motion in the  
5 case currently before us today, and we can  
6 talk afterwards about how those rulings may  
7 apply in other contexts.

8 THE ARBITRATOR: Does that work with  
9 you, Ms. Chaitman?

10 MS. CHAITMAN: Do we have the Wilenitz  
11 responses to discovery? Do you have those?

12 MR. JACOBS: Let me look.

13 MS. CHAITMAN: Because I have the ones  
14 you responded to with the defendants --

15 MR. JACOBS: Right.

16 MS. CHAITMAN: -- and this is what I  
17 had submitted to Judge Maas.

18 MR. JACOBS: Right. So that's what's  
19 complicated, is that there was an original  
20 set in Wilenitz. Right. And we had a  
21 hearing before the court. The judge  
22 authorized the motion and then you served a  
23 nearly identical, but slightly revised set  
24 across all of your cases --

25 MS. CHAITMAN: Right, because I took

1 out the Picard compensation. That's the only  
2 change which I recall.

3 MR. JACOBS: There are two requests  
4 that are new --

5 THE ARBITRATOR: Yes, you substituted  
6 two requests for the --

7 MS. CHAITMAN: Do you have a problem  
8 in raising those?

9 MR. JACOBS: No, we'll -- we're  
10 prepared to proceed on your second set of 18  
11 requests, which is the revised version, if  
12 that's amenable to you.

13 MS. CHAITMAN: So do you have --

14 THE ARBITRATOR: Yes, I think we're  
15 all on the same page.

16 MS. CHAITMAN: All right. Great.

17 So this is what the caption looks  
18 like. Are you --

19 THE ARBITRATOR: You're just trying to  
20 get me to the request. I have -- let's see.  
21 I actually have it in slightly different  
22 form. And I know that there's a substitution  
23 for two of the requests, but I think it --  
24 I'll be able to follow.

25 MS. CHAITMAN: Okay. So I'm turning



1 to page 6, which is our first document  
2 request. Wilenitz discovery demand.

3 THE ARBITRATOR: List every employee?

4 MS. CHAITMAN: Yes.

5 "List the name and address of every  
6 former BLMIS employee with whom you spoke  
7 about the meaning of entries on the customer  
8 statements and state the substance of what  
9 you questioned each person about and what  
10 that person told you."

11 Then "Produce all documents you  
12 reviewed with such employee and all documents  
13 indicating what each person said."

14 So the --

15 THE ARBITRATOR: And they gave you --  
16 I'm not sure they gave it to you specifically  
17 in Wilenitz, but -- I think they did, but  
18 they gave you an exhibit which relates  
19 apparently to 2008 only and had been filed in  
20 the Dusek case that basically gave the  
21 identifying information for -- it looks like  
22 everybody that was on the payroll --

23 MR. JACOBS: Right.

24 THE ARBITRATOR: -- in 2008, but  
25 didn't respond to anything else --

1 MS. CHAITMAN: Right.

2 THE ARBITRATOR: -- as to your  
3 request.

4 MS. CHAITMAN: Right.

5 MR. JACOBS: The Dusek response in the  
6 list you're referring to I believe we  
7 produced in connection with a later request,  
8 not number 1.

9 THE ARBITRATOR: Oh, okay.

10 MR. JACOBS: That was a different  
11 request asking for the identification of  
12 employees by function at BLMIS.

13 THE ARBITRATOR: But wouldn't it, at  
14 least for 2008, respond to the first part of  
15 Request No. 1, list -- oh, no.

16 MS. CHAITMAN: With whom you spoke.

17 THE ARBITRATOR: Okay.

18 MR. JACOBS: The objection -- your  
19 Honor, if I may, our objection to Request  
20 No. 1 is that it is on its face asking for  
21 the trustee's work product. It's asking for  
22 us to identify the list of employees that we  
23 may have spoken to in connection with our  
24 investigation as to any facet of the  
25 trustee's responses and, I'll just add,

1 duties and responsibilities with respect to  
2 his role in liquidating the estate and in  
3 recovering funds for the customer fund.

4 That information -- that list, in and  
5 of itself, not to mention what is requested  
6 after the identification, which is the actual  
7 notes of those interviews, is protected work  
8 product under Taylor v. Hickman. It falls  
9 squarely within the work-product doctrine.  
10 It's the trustee's mental impression in  
11 preparation for litigation as to his strategy  
12 in discerning information and his mental  
13 impressions about how he may use that.

14 So we object to this request in its  
15 entirety. It's prima facia, outside the  
16 scope of what's discoverable in this  
17 instance.

18 MS. CHAITMAN: My answer to that,  
19 Judge, is that, under the Securities Investor  
20 Protection Act, the trustee has an  
21 affirmative obligation to investigate the  
22 debtor and report to the creditor body and to  
23 the bankruptcy court what his findings are.

24 And we do not have access to this  
25 information. And it's essential for us in

1 terms of formulating some of our defenses.

2 And that's why I think we're entitled to this  
3 information.

4 THE ARBITRATOR: Let me ask a  
5 question, which is, are there any documents  
6 that have been shown to former Madoff  
7 employees that have not been produced in the  
8 litigation?

9 MR. JACOBS: I don't know that,  
10 sitting here today, I can answer that  
11 question, your Honor, but I think that --

12 THE ARBITRATOR: I suppose you could  
13 have shown a particular employee --

14 MR. JACOBS: How to --

15 THE ARBITRATOR: -- Mr. Benjamin's  
16 account records, but not to have produced  
17 them in Mr. Wilenitz's case.

18 MR. JACOBS: Right.

19 THE ARBITRATOR: So excluding that.

20 MR. JACOBS: Right. So I think the  
21 starting point of this discussion has to be  
22 Rule 26 and the fact that what is  
23 discoverable in this case, in Wilenitz, must  
24 be both relevant to the claims in this case  
25 and proportionate, most importantly, to the

1 needs of the parties in discovery. And there  
2 are several factors enumerated in the rule as  
3 to how to determine proportionality.

4 So it is possible we showed a document  
5 to an employee that has nothing to do with  
6 any of the claims or defenses in this case,  
7 in which case we have no obligation to  
8 produce it or make it available in any form.  
9 I don't think that's the case.

10 But that being said, as I'm sure you  
11 read in our papers and we'll be discussing in  
12 connection with other requests, we have made  
13 an unprecedented amount of the trustee's  
14 books and records available to all  
15 defendants, including the defendants here,  
16 specifically all of the over 4 million  
17 records that we've made available through  
18 Electronic Data Room 1 in a very carefully  
19 curated, organized fashion. And those  
20 documents touch upon all aspects of the  
21 operations and financials of the BLMIS.

22 So I don't think it's likely that we  
23 can't -- to answer your question explicitly,  
24 I can't, sitting here today, represent that  
25 there was no document that we've shown any

1 employee on any topic that hasn't been put in  
2 that data room or otherwise produced, but  
3 it's highly, highly unlikely.

4 The trustee has not engaged in any  
5 hide-the-ball efforts here. We have spent  
6 years working to find solutions to very  
7 complex discovery issues given the volume of  
8 data we have that we're responsible for. And  
9 our goal is to make it as available and to be  
10 as transparent to all litigants to the  
11 fullest extent possible. So that's what  
12 we've done with e-Data Room 1.

13 And we also have undertaken  
14 painstaking efforts to provide the defendants  
15 with the full universe of all documents we  
16 believe that are relevant to the claims and  
17 defenses in this case from that data set.

18 So all of that said, I still don't  
19 think that there's any proportionate  
20 articulated defensible reason why the  
21 defendant should be entitled to our  
22 investigatory mental impressions and work  
23 product in connection with any interviews of  
24 BMLIS employees we did.

25 Now, certainly we would give them

1 transfers if we had taken a deposition. They  
2 are taking their own depositions of  
3 Mr. Madoff and potentially others. And that  
4 is all fair game for the record, but this  
5 request is specifically calling for work  
6 product. This is not calling for -- even our  
7 selection -- I would posit that potentially  
8 even our selection of documents that we chose  
9 to show a particular employee is a  
10 compilation that's protected work product.  
11 That doesn't mean we wouldn't produce them if  
12 they were responsive and nonobjectionable to  
13 other valid requests within the scope of  
14 relevance, but the defendants shouldn't be  
15 entitled to the disclosure of that work  
16 product in connection with this request.

17 MS. CHAITMAN: Let me just say, Ted  
18 has raised the issue of -- two issues that I  
19 think are important for you to rule on.

20 One is that the trustee has  
21 consistently taken the position that the  
22 discovery should be limited to what is  
23 appropriate for a particular case. And, in  
24 fact, the argument has been made that in  
25 so-and-so's case, the trustee's only suing



1 for \$200,000, therefore, the trustee should  
2 not have to produce a lot of documents, it's  
3 only a \$200,000 case.

4 We view these cases as one in the  
5 sense that I represent 92 defendants in 92  
6 cases, several hundred people all together,  
7 and that all of this discovery is relevant  
8 for all of the cases.

9 THE ARBITRATOR: I'm not sure I read  
10 the trustee's proportionality argument that  
11 way, but I think the fundamental problem here  
12 is that the request calls for classic work  
13 product. Work product is not absolute except  
14 as to so-called core work product.

15 But just on the face of it, and in  
16 response to many of these requests, I think I  
17 agree with what I read Judge Bernstein's  
18 off-the-cuff rulings were or opinions were,  
19 but I'm not sure how you get around the rule  
20 protecting work product here.

21 MS. CHAITMAN: Well, I think that  
22 there is.

23 THE ARBITRATOR: Other than your SIPA  
24 argument.

25 MS. CHAITMAN: Right. So, number 1,

1 the trustee has an affirmative duty to do  
2 this, and we contend that he has failed in  
3 his duty.

4 The second thing is that there's a  
5 substantial need here because we don't have  
6 the ability to get this information from any  
7 other source.

8 And going to the e-data room, since  
9 Ted mentioned that, honestly, Judge, the  
10 e-data room is a farce. I made the point in  
11 my papers that it's at least six weeks ago  
12 that I asked Ted and Marie to tell me  
13 whether, in the e-data room, there are any  
14 trading records dating back from the 1980s.  
15 I've repeated that request in writing. I've  
16 never gotten a response.

17 Now, you know, the trustee wants to  
18 take a position he's just an average  
19 litigant. He's not an average litigant.  
20 He's got an infinite funding source. He's up  
21 against people who have been financially  
22 devastated and emotionally devastated.

23 And we have a right to at least a  
24 level playing field. We've searched the  
25 e-data room. I'm going to ask Greg, who

1           spent a lot of time on the e-data room, to  
2           tell you how it's organized, because it's a  
3           joke.

4                     But the fact of the matter is that we  
5           have not been able to find a single trading  
6           record from the 1980s. And this goes to the  
7           issue of the trustee's contention that there  
8           were no trades.

9                     Now, if there are trading records or  
10          any documents reflecting trading records --  
11          they could be FINRA reports. They could be  
12          audits that were done by FINRA. They could  
13          be the Depository Trust Company  
14          communications. There are all different  
15          categories of documents.

16                    We've had people spend time in the  
17          e-data room. They can't find any of these  
18          documents, and I can't even get a response  
19          from the trustee's counsel on it.

20                    THE ARBITRATOR: I guess one potential  
21          issue is -- I read all the materials that  
22          relate to e-Data Room 1. And one thing I  
23          carried away from that is that not all of the  
24          materials that were at Madoff either are in  
25          e-Data Room 1 or fall within the category of

1 core account documents that were turned over  
2 to whoever the account related to.

3 So that there might be trading records  
4 that relate to, for example, the  
5 market-making side of the business that are  
6 not in e-Data Room 1.

7 Do I understand that correctly?

8 MR. JACOBS: Not with that particular  
9 example. But the first part of your  
10 question, are all BLMIS's books and records  
11 in e-Data Room 1, and the answer is  
12 absolutely not. The e-Data Room 1 could  
13 potentially have as many as -- I don't even  
14 want to guess, your Honor.

15 It's not practical, reasonable,  
16 feasible or desirable from any perspective of  
17 any litigant or any of the Federal Rules of  
18 Civil Procedure that govern discovery in  
19 these actions to undertake an effort to  
20 achieve that.

21 What we have done under the -- under  
22 the relevant rules that we are subject to,  
23 which is the Federal Rules of Civil  
24 Procedure -- and I respectfully disagree with  
25 Ms. Chaitman. There's nothing in the SIPA

1 statute that enlarges or expands the  
2 trustee's discovery obligations under the  
3 rules, nor is there anything in the statute  
4 that overrides our claim to work product  
5 protection.

6 So that argument is completely a red  
7 herring, non sequitur. The over 4 million  
8 records in e-Data Room 1, as I mentioned,  
9 have been very carefully curated to contain,  
10 at a minimum, everything that's feasible.

11 And there are some things that aren't  
12 amenable to be put in the data room. And  
13 those have been disclosed and are made  
14 available by other means, but it contains the  
15 bulk of what was considered by our experts  
16 who, under relevant court orders, are  
17 providing summary reports of the fraud.

18 And the data room was originally  
19 conceived as a mechanism to permit rapid  
20 disclosure or make available for potential  
21 production and transparency all of the  
22 evidence that our experts relied upon in  
23 determining their conclusions.

24 So that particular order is the  
25 November -- I might be getting the date

1 slightly off. I think it's the November 10,  
2 2011, litigation procedures order.

3 It says -- Judge Lifland entered an  
4 order stating that, given the enormous volume  
5 of data at issue potentially in this  
6 liquidation, the trustee could provide, in  
7 the form of a summary expert report, his  
8 conclusions as to the salient relevant  
9 issues, one of those being the fraud, and  
10 make -- otherwise make available the  
11 underlying evidence to all litigants in the  
12 data room.

13 That's exactly what we've done.

14 THE ARBITRATOR: Let me cut you short.

15 As to Request No. 1, I understand  
16 Ms. Chaitman's SIPA argument, but Judge  
17 Bernstein concluded that, in this  
18 circumstance, the trustee is no different  
19 than the ordinary bankruptcy trustee who does  
20 not have enhanced obligations. And even if  
21 he does, it seems to me, as I said at the  
22 outset, this is classic work product.

23 There's a distinction between making  
24 available all of the documents in reasonably  
25 accessible form and saying who you

1 interviewed and essentially what you  
2 considered important.

3 So to the extent there's a motion to  
4 compel with respect to Request No. 1, I'm  
5 going to deny it.

6 Let me also -- because it's going to  
7 come up in a number of these areas. There's  
8 the overarching claim of privilege waiver,  
9 Ms. Chaitman.

10 And it seems to me that, generally  
11 speaking, judges do not require, and  
12 typically parties agree not to require that  
13 each side, from the date that a litigation  
14 commences or people understand that the suit  
15 is about to be filed, that everything be  
16 logged on a privilege log.

17 I would imagine that you have not  
18 logged and would not want to log all of your  
19 communications, to the extent they were  
20 written, with your clients from December 2008  
21 forward.

22 So I'm not going to find that there  
23 was a privilege waiver by not logging post  
24 December 11, 2008, documents.

25 Why don't we go on from Request No. 1,

1 then.

2 MS. CHAITMAN: Can we -- since Ted  
3 mentioned the trading records, can we resolve  
4 the trading records? Because, again, what  
5 Ted is saying is that the trustee selected  
6 what would be put in the e-data room, and  
7 we've never gotten an answer.

8 THE ARBITRATOR: I saw you sent at  
9 least two e-mails.

10 MR. JACOBS: Yes.

11 THE ARBITRATOR: And I think there  
12 should be -- notwithstanding the fact that,  
13 from the trustee's perspective, there's this  
14 extensive guide to what is in the data room,  
15 I think it has to be responsiveness to  
16 reasonable requests. And this is sort of  
17 binary. It's yes or no.

18 MR. JACOBS: I can answer this  
19 question I think rather easily.

20 So first and foremost, all of the  
21 trading records we have currently identified  
22 are in the data room. They're in the data  
23 section under DTC.

24 Now, Ms. Chaitman served her own  
25 subpoena on DTC for those exact records. We



1           obtained them in part from a Rule 2004  
2           subpoena and part from what we restored on  
3           the BLMIS DTC terminal, in part from  
4           documents we got from the government.

5                     We compiled all of that. It is all  
6           available in a specifically labeled folder  
7           called DTC. There are also folders in that  
8           exact same section that are labeled "FINRA."  
9           All of the categories of documents you're  
10          looking for, as we've written you in letters  
11          and attempted to explain to you many times in  
12          the past, are actually in their own folders  
13          in the data room so they can be -- they are  
14          accessible that way.

15                    Now, with respect to earlier periods  
16          of the fraud, that is an allegation and an  
17          issue that you recently raised in the PW  
18          context pursuant to Mr. Madoff's testimony.  
19          Even though it was outside the scope of the  
20          order allowing that testimony, the judge has  
21          now allowed a second deposition on that  
22          subject.

23                    We will look for and have been looking  
24          for stuff -- any additional stock trading  
25          records as to earlier periods of time in

1 addition to what is currently in the data  
2 room. To the extent we find them or restore  
3 them or can obtain them from DTC or any other  
4 source, we will produce them to you and we  
5 will put them in the data room. Absolutely.

6 MS. CHAITMAN: But see --

7 THE ARBITRATOR: Let me rephrase that  
8 for a second and see whether it's correct.

9 That to date, except to the extent  
10 that they may be in DTC records or FINRA  
11 records in that data room, you haven't found  
12 any other records?

13 MR. JACOBS: We're currently looking.  
14 Because it's an active issue that  
15 Ms. Chaitman has raised in the PW context in  
16 discovery. There's a deposition scheduled  
17 for December 20th where Mr. Madoff will give  
18 additional testimony as to those issues.

19 And clearly we are going to want to  
20 respond, if we can to meet with the debtor's  
21 books and records that are available. So we  
22 are actively looking for that material.

23 THE ARBITRATOR: December 20th is --

24 MS. CHAITMAN: Next Tuesday.

25 THE ARBITRATOR: When are you going to

1 get back to --

2 Off the record.

3 (Discussion off the record.)

4 THE ARBITRATOR: Back on the record.

5 So when are you going to respond to  
6 Ms. Chaitman's request in that regard since  
7 the deposition's next Tuesday?

8 MR. JACOBS: Well, anything that we  
9 would use in the deposition we will produce  
10 prior to the deposition, if there are items.

11 THE ARBITRATOR: But it's --

12 MS. CHAITMAN: You see what they're  
13 doing, Judge. First of all, I've asked for  
14 this for two months.

15 And the second is, they're going to  
16 give me what they want to use and not what  
17 they have, and this is just not discovery.

18 MR. JACOBS: We've given Ms. Chaitman  
19 everything we have, and that's in the data  
20 room. So there's no dispute about -- there's  
21 nothing to compel.

22 THE ARBITRATOR: I thought I heard you  
23 say earlier that you're continuing to look  
24 for other documents.

25 MR. JACOBS: That's right. And my

1 ability to answer as to a date certain for  
2 production will depend upon our success in  
3 identifying that, if any. And I don't know  
4 the answer to that.

5 There's -- as we disclosed in  
6 discovery responses, BLMIS maintained a  
7 warehouse. There are multiple pieces of  
8 media in that warehouse. There are hard copy  
9 documents. Much of it has been scanned,  
10 restored and made available in the data room,  
11 but there might be -- there might be material  
12 that's on a tape or a piece of media  
13 somewhere that we haven't looked at yet, and  
14 that process takes a long time.

15 But before -- we shouldn't be required  
16 to have to look at every piece. There has to  
17 be an articulated -- there should at a  
18 minimum be an articulated basis to the need  
19 for it under Rule 26's proportionality  
20 standards.

21 THE ARBITRATOR: Well, Mr. Madoff says  
22 that he was running, even on the investment  
23 advisory side, a legitimate business with  
24 these convertible securities up until  
25 sometime in the '90s; correct?

1 MR. JACOBS: When you have an  
2 opportunity to read Mr. Dubinski's report,  
3 you'll see that our expert disagrees --

4 THE ARBITRATOR: Okay.

5 MR. JACOBS: -- with that self-serving  
6 testimony. And, furthermore, that it's not  
7 supported by any of the voluminous effort  
8 over long periods of time that he did  
9 consider and that has been made available.

10 THE ARBITRATOR: Okay. But you're  
11 saying that you are attempting to find --  
12 haven't phrase it this way, but you're saying  
13 you're attempting to find records which, if  
14 reviewed, potentially could support  
15 Mr. Madoff's view of the world; is that  
16 correct?

17 MR. JACOBS: Yes. We are -- well,  
18 not -- it's not specifically how I would  
19 phrase it, but we are looking for --  
20 Ms. Chaitman has requested actual stock  
21 trading activity and records demonstrating  
22 actual trading stock activity, whether it be  
23 in House 5 or elsewhere, for those earlier  
24 periods of time, which Mr. Madoff's testimony  
25 has now opened the door to. So whether it

1 refutes or supports that testimony, we will  
2 produce it if we can identify it.

3 THE ARBITRATOR: And I think as a  
4 practical matter, unless there's some reason  
5 why this can't occur, should that be made  
6 available, and it doesn't sound like under  
7 any conceivable scenario it could occur  
8 before next Tuesday, the possibility exists  
9 that Mr. Madoff may be deposed a third time.

10 MR. JACOBS: That --

11 MS. CHAITMAN: Judge, can I point  
12 something out?

13 THE ARBITRATOR: Yeah.

14 MS. CHAITMAN: DiPascali pled in 2010,  
15 I believe. Madoff pled in 2009. They  
16 both -- and you'll see the plea because they  
17 both said the same thing. The first words  
18 out of DiPascali's mouth were "In the early  
19 1990s, we started a fraud." So this is not a  
20 new issue.

21 And what Ted has really said to you,  
22 in substance, is that they put in the e-data  
23 room what supports their expert's report,  
24 which is --

25 MR. JACOBS: That's not true.

1 MS. CHAITMAN: I didn't interrupt you  
2 and I'd appreciate it if you don't interrupt  
3 me. I'd like to be able to finish.

4 MR. JACOBS: Please finish.

5 MS. CHAITMAN: So they have a world  
6 view of the case, which they're entitled to,  
7 possibly. And they won't produce documents  
8 that are inconsistent with that world view.

9 And this document request is dated  
10 August 5, 2016. So they've had more than  
11 enough time to look for the documents; they  
12 just don't want to produce them.

13 And what's going on here is that  
14 they've sold a certain view of what happened  
15 here. And I don't believe it's accurate.  
16 And they're doing everything they possibly  
17 can to prevent the truth from coming out.

18 MR. JACOBS: May I respond to that,  
19 your Honor?

20 THE ARBITRATOR: Before you --

21 MR. JACOBS: It's so outrageous, I  
22 can't leave it unresponded to.

23 THE ARBITRATOR: Okay. But in  
24 addition to the documents that are in e-Data  
25 Room 1, and I'm focusing on trading records,

1           there's an inventory, I assume, that the  
2           trustee prepared of the rest of the universe.

3                   MR. JACOBS: In a sense. We have --  
4           we've endeavored to painstakingly track all  
5           of the items that are in the warehouse that  
6           we inherited from BLMIS. But documents, your  
7           Honor, may exist on microfiche, they may  
8           exist on a piece of hard media, they may  
9           exist on a floppy disk --

10                   MR. HUNT: They may be in a box in a  
11           warehouse --

12                   MR. JACOBS: We don't have -- we don't  
13           have documents that are readily accessible  
14           and restored, that anyone to date that has  
15           looked at, that haven't been made available  
16           to our experts or to Ms. Chaitman.

17                   It is simply an outrageous statement  
18           to assert that the trustee is cherry-picking  
19           the evidence available to him and keeping  
20           from the defendants items that may hurt, a  
21           narrative that he constructed out of thin air  
22           to suit some purpose.

23                   Our goal here is to recover funds for  
24           the customer fund under the laws afforded to  
25           the trustee for which he's tasked to do so.



1 Our objective is first and foremost to get it  
2 correct. We don't want to sue anyone who  
3 doesn't owe us money. We don't want to  
4 recover a single dollar that isn't  
5 appropriately recovered under the relevant  
6 statutory framework.

7 Ms. Chaitman has all of the documents  
8 that are readily available, have been  
9 restored and have been considered, good or  
10 bad, to the trustee's case currently.

11 Now, we may undertake additional  
12 restorations. I don't know. I can't speak  
13 definitively about that. Ms. Chaitman is  
14 actively litigating and challenging our  
15 expert conclusion as to the earlier periods  
16 of time.

17 We never intended to credit or rely  
18 upon the testimony of Bernard Madoff,  
19 frankly. He committed the world's greatest  
20 Ponzi scheme. I don't think his testimony is  
21 reliable or should be credited in any sense  
22 or fashion. However, the judge has allowed  
23 it.

24 Now that we're going down that road,  
25 we will endeavor to see if, on some floppy

1 disk somewhere in a box in a warehouse, there  
2 might be early stock trading records from  
3 periods predating what we currently have.

4 So you know, all of the stock trading  
5 records that we do have and we have made  
6 available were obtained because we went out  
7 in the world and subpoenaed them and  
8 diligently and aggressively tried to find  
9 them wherever they may exist.

10 Ms. Chaitman did too. The DTC is  
11 under a regulatory framework where it was, by  
12 law, required to keep records for a certain  
13 number of years. That's why they had  
14 documents back through 2002 which they  
15 produced to us and we in turn produced to  
16 Ms. Chaitman.

17 We also scoured, like I said, all of  
18 the DTC terminal that was active and live by  
19 BLMIS as of the time we took custody of it.  
20 We restored all of that data. We put it in  
21 the data room.

22 We also subpoenaed the SEC. We  
23 cooperated -- they cooperated with us. They  
24 shared with us the fruits of their similar  
25 investigation.

1 All of that material, wherever we  
2 could find it, good or bad, we've made  
3 available and we provided to our experts for  
4 consideration.

5 THE ARBITRATOR: Well --

6 MR. JACOBS: So that's the lay of the  
7 land today.

8 As discovery unfolds in the PW matter  
9 and now that it is switched over to the  
10 adversary proceeding and we gear up for  
11 potential trial on the fraud, as Judge  
12 Bernstein has invited the parties to  
13 consider, if we can find and identify  
14 additional materials that are responsive to  
15 this issue, we will make it available  
16 regardless of whether it hurts or helps us  
17 and, as necessary, our experts -- we'll  
18 provide it to our experts as well for them to  
19 appropriately supplement any relevant report  
20 that's impacted.

21 THE ARBITRATOR: Having dealt with DTC  
22 records in the past and because of their  
23 continuous net settlement rules, my take on  
24 this is that the DTC records, in terms of  
25 what Ms. Chaitman's trying to prove and

1           you're trying to disprove, will probably end  
2           up being gibberish, but --

3                   MS. CHAITMAN: They only go back to  
4           2002.

5                   THE ARBITRATOR: Okay. But even if  
6           you had them back further, there are a lot of  
7           complicating factors. I had that in another  
8           case. But --

9                   MR. JACOBS: That issue was precedent  
10          of later requests where Ms. Chaitman has  
11          asked us to match individual trades for  
12          customers with House 5 trading activity. And  
13          the information doesn't work that way.

14                  THE ARBITRATOR: But let me -- I  
15          recognize that we're dealing with volume  
16          that's far beyond anything certainly I've  
17          dealt with and probably anybody in the room  
18          has dealt with previously.

19                  Is there an inventory of files that  
20          can be produced? I suppose that's work  
21          product, but there's nothing particularly  
22          secret about that. It may be annotated in  
23          which event I would suggest the unannotated  
24          version of it be produced.

25                  But I do not want -- since it is going

1 to take you some time, as you said, to look  
2 for what may not even be there, but --

3 MR. JACOBS: Well, my objection to  
4 producing anything that may exist is exactly  
5 what you've identified, is that it's work  
6 product, but even before that, there has to  
7 be an articulated need for it that no other  
8 discovery from a different source can fill.

9 I mean, it has to -- the cost and  
10 burden of us having to make -- prepare that  
11 in a way that it could be produced without  
12 waiving work product in a producible form --  
13 what purpose will it serve, I guess is the  
14 question? I mean, I just -- what is the  
15 need? What's the proportionality  
16 consideration that would demand its  
17 disclosure in the context of this or any  
18 given request?

19 I can't in my head conceptualize --  
20 after considering the effort that our team  
21 and that I personally have been involved in  
22 over the course of years and spending  
23 millions of dollars to make all of this  
24 information transparent and available in  
25 every single case, on all of the case-wide

1 issues, whether it be fraud or insolvency,  
2 which, arguably, isn't even -- the latter  
3 isn't even an element in these claims, but  
4 fraud certainly is.

5 This is my answer to all of these  
6 requests, is, how can any incremental step  
7 further in light of everything that we've  
8 already done -- how can that possibly be  
9 proportionate to the needs of this case or  
10 even all of Ms. Chaitman's cases taken as a  
11 whole or even all the good-faith adversary  
12 proceedings taken as a whole? I mean,  
13 there's nothing more for us that we can  
14 disclose.

15 THE ARBITRATOR: Is it correct that  
16 except for third-party records that may have  
17 been subpoenaed, you and your team have not  
18 encountered any pre 1990 records of actual  
19 trading that relate to the investment  
20 advisory customers?

21 MR. JACOBS: We have never -- I have  
22 never personally and I don't know of any  
23 record ever seen by anyone on our team that  
24 shows actual stock trading for a House 17 or  
25 an IA, investment advisory, customer, no.

1 MS. CHAITMAN: But, Judge, that  
2 ignores the issue. Because Madoff testified  
3 that there was no House 17 before 1992. This  
4 is a fiction of Mr. Picard and his expert.  
5 It was all one unit.

6 It was one company and he said all the  
7 trading in the investment advisory customer  
8 accounts was trading with Madoff. In other  
9 words, he had -- he was doing trades equal to  
10 10 percent of the daily volume on the New  
11 York Stock Exchange. So he had a huge  
12 inventory of trades -- of securities.

13 He would transact trades with the IA  
14 customers. So it's not -- it's not that  
15 you're looking for House 17 trades. We  
16 want -- we want the records in the 1980s,  
17 before 1992, of all of the Madoff trades.  
18 And the trustee inherited those records, to  
19 the extent they exist. And there's no other  
20 place we can get them.

21 And they disprove -- just to  
22 understand the significance of this, if, in  
23 fact, both DiPascali and Madoff are telling  
24 the truth, then the trustee has to  
25 recalculate every single claim. Because he

1 discredited claims, he disallowed claims on  
2 the basis that there was no net equity  
3 because he didn't recognize any trades going  
4 back to the 1980s. So --

5 THE ARBITRATOR: Also, you would argue  
6 then that the Ponzi presumption --

7 MS. CHAITMAN: Of course. You have  
8 to --

9 THE ARBITRATOR: -- applies.

10 MS. CHAITMAN: -- yes. So --

11 THE ARBITRATOR: Let me modify my  
12 question to Mr. Jacobs.

13 And if we take out House 5, House 17,  
14 apart from the DTC and FINRA and other  
15 third-party records that I gather are in the  
16 e-data room, have you or, to your knowledge,  
17 has your team found pre 1982 trading records?

18 MS. CHAITMAN: 1992.

19 THE ARBITRATOR: 1992.

20 MR. JACOBS: Not that I can confirm or  
21 know of. We are looking. And I'm not  
22 directly involved with that effort, so it's  
23 certainly information I can find out. And  
24 we're trying very hard to get it.

25 THE ARBITRATOR: And understanding



1           that it's perhaps looking for a needle in a  
2           haystack, it seems to me there's a need to  
3           come up with an end date by which you'll  
4           respond saying either you found something or  
5           you haven't and, adding into that, the  
6           understanding that even given the size of the  
7           Madoff fraud as a whole, it would not be  
8           sensible to restore every microfiche and look  
9           through it, but there has to be a good-faith  
10          effort to look.

11                   MR. JACOBS: Right. And we are  
12           conducting that investigation right now.  
13           We're absolutely conducting that  
14           investigation in direct response to  
15           Ms. Chaitman's request.

16                   THE ARBITRATOR: But there has to be  
17           some end date.

18                   MR. JACOBS: My only -- my only  
19           hesitation in providing one is that -- I'm  
20           pretty confident that if there is anything  
21           that we can find that contains these type of  
22           records from an earlier period, it's going to  
23           be on media that we're going to have a  
24           challenge restoring.

25                   So it might be microfiche, microfilm,

1 some type of backup tape that is for a  
2 computer program or software or hardware that  
3 doesn't exist any longer.

4 So we have to -- when we were dealing  
5 with items like that, we have to send it out  
6 to a vendor to see if they can restore it or  
7 give us a quick peek to kind of try to give  
8 us a sense if it would be fruitful for a  
9 fuller restoration. All of this costs a lot  
10 of money, so we weigh the balance of -- all  
11 of those factors have to be considered and I  
12 think are fairly considered under  
13 proportionality analysis.

14 But the bottom line, for the purposes  
15 of your question, is it takes time.

16 THE ARBITRATOR: Okay. But let me  
17 rephrase it and perhaps in terms of this  
18 question: How long will it take you to make  
19 a good-faith effort to determine whether  
20 there are such pre 1992 trading records not  
21 previously produced?

22 Putting aside how long it will take to  
23 produce them, but to determine whether there  
24 are such records.

25 MR. JACOBS: My answer is the same,

1 your Honor, because I can't -- I mean, if I  
2 send out a microfilm tomorrow, I don't know  
3 how long that's going to take or what  
4 information I might even -- it's really --  
5 we're dealing with uncharted territory here  
6 in terms of both discovery and e-discovery.  
7 It's not as simple as me doing a search in a  
8 database and being able to say, oh, I found  
9 three things I can produce tomorrow, but --

10 THE ARBITRATOR: There has to be, at  
11 least for that second inquiry, some deadline,  
12 even if it's adjusted, even if -- even if it  
13 then requires a substantial effort down the  
14 road having determined, by looking at one  
15 microfiche, that there are potentially  
16 records and then dealing with the fact that  
17 there are a hundred thousand microfiches to  
18 deal with.

19 There's got to be some end date so  
20 Ms. Chaitman knows that the effort will not  
21 end 12 years after the last Madoff case.

22 MR. JACOBS: Right. Well, I will have  
23 to talk to almost literally an army of people  
24 to get that information for you, including  
25 with the core professionals, outside vendors

1 and the team that's --

2 THE ARBITRATOR: So suppose I say that  
3 you give me a response to that second  
4 question within a week?

5 MR. JACOBS: I can endeavor to do  
6 that, your Honor. And at least within a  
7 week's time, I can give you an update as to  
8 why I can't -- to where the status is and why  
9 I can't be more specific.

10 THE ARBITRATOR: But understand that  
11 I'm going to set some date, recognizing it  
12 may have to be adjusted, but -- so that  
13 there's some date, and also recognizing that  
14 potentially there may be a third deposition  
15 of Mr. Madoff that Ms. Chaitman takes if  
16 there is such information.

17 MR. JACOBS: Okay. I understand.

18 THE ARBITRATOR: I think that's the  
19 best I can do for you, Ms. Chaitman.

20 MS. CHAITMAN: I appreciate that. And  
21 I also think that we're entitled to a  
22 description of all of the documents that the  
23 trustee chose not to put in the e-data room.  
24 Because I'm concerned that he put into the  
25 e-data room the documents that support his

1 view of this case and did not put into the  
2 e-data room documents that he did review  
3 which are inconsistent with the positions  
4 he's taken.

5 So I think that we're entitled to a  
6 list. There's a warehouse on Long Island in  
7 such-and-such a town and it contains X and we  
8 didn't put -- they must have all this.

9 THE ARBITRATOR: Except I gather they  
10 have it annotated in such a way that it's  
11 work product --

12 MS. CHAITMAN: Let them show it to  
13 you.

14 THE ARBITRATOR: And your assumption  
15 is one that I'm not willing to buy into. The  
16 trustee and both sides and every litigant has  
17 an ethical obligation. And I assume that  
18 even if you don't like the way in which the  
19 trustee is going about -- is functioning,  
20 including claw-back actions against people  
21 who you view as victims, I have no basis to  
22 assume that they're proceeding dishonestly.

23 In terms of me looking at the  
24 inventory, it probably is almost as useless  
25 as you looking at the inventory. And I'm not

1 saying that disparagingly. Because it's  
2 going to be extraordinarily lengthy and  
3 probably not terribly informative. Because  
4 if it were informative, Mr. Jacobs and his  
5 colleagues could have said, oh, we found, you  
6 know, this treasure trove of documents and  
7 now the issue is how long it's going to take  
8 to restore it.

9 MR. JACOBS: And, your Honor --

10 THE ARBITRATOR: I take it that you  
11 can represent to me that there's nothing on  
12 the face of the inventory that reflects  
13 pre 1992 trading records that are not yet in  
14 the e-data room.

15 MR. JACOBS: Absolutely not.

16 THE ARBITRATOR: You're agreeing with  
17 me.

18 MR. JACOBS: Yes, there's nothing  
19 there -- no, there's nothing of that nature.

20 And, your Honor, the request that  
21 Ms. Chaitman is making is absolutely -- for  
22 you to order that would be absolutely  
23 unprecedented. And without a particularized  
24 articulation of the need or what is missing  
25 from the over 4 million, 4 million,

1 records --

2 THE ARBITRATOR: The short answer is  
3 I'm not going to require that. And I think  
4 we've exhausted Request No. -- the discussion  
5 of Request No. 1.

6 Is Request No. 2 next?

7 MS. CHAITMAN: Yes. Thank you.

8 We've asked for -- obviously one of  
9 the major issues in the case is the  
10 reliability of the records. And we've asked  
11 for the trustee to disclose every single  
12 factual error he's found in the books and  
13 records. Because, again, that goes to the  
14 reliability of the records.

15 We've been able to nail down some of  
16 this information in the profit withdrawal  
17 litigation where, in fact, the trustee's own  
18 experts have conceded that there are all  
19 kinds of inconsistencies in the records, but  
20 outside the profit withdrawal litigation,  
21 which we think we're entitled to the same  
22 disclosures.

23 MR. JACOBS: May I respond, your  
24 Honor?

25 THE ARBITRATOR: Please.

1 MR. JACOBS: In the Wilenitz case  
2 that's before us today, the defendants have  
3 conceded that the cash activity for the  
4 accounts that they opened in 2003 are  
5 correct. So from both a relevance and a  
6 proportionality perspective, this request and  
7 the one that follows, which is -- which is  
8 similar, are completely outside the universe  
9 of what could even remotely be, under  
10 conjecture or speculation, possibly  
11 considered relevant proportionate to the  
12 needs of this case.

13 Judge Bernstein has characterized the  
14 adversary proceedings as strict liability  
15 actions; you got the money or you didn't.  
16 You got the money, you have to pay it back  
17 because it belongs to somebody else, if the  
18 trustee can prove that with the books and  
19 records related to the specific account.

20 The books and records of other  
21 customers, beyond the accounts that we sued  
22 upon in any given case, are not relevant on  
23 that issue to these claims.

24 THE ARBITRATOR: Well, Wilenitz, which  
25 we are pronouncing several different ways, is



1 a unique case because I guess it's --  
2 Mrs. Wilenitz has that statement saying, I've  
3 compared it to my records and they agree.

4 MR. JACOBS: Right.

5 THE ARBITRATOR: So I agree with you  
6 as to Wilenitz, it's irrelevant, as Judge  
7 Bernstein said. But there are lots of  
8 clients that Ms. Chaitman has. And even  
9 though formally the motion only deals with  
10 Wilenitz, conceptually if the books and  
11 records regarding deposits and withdrawals  
12 are woefully inaccurate, that it seems to me  
13 is relevant.

14 MR. JACOBS: And this --

15 THE ARBITRATOR: In part --

16 MR. JACOBS: In this particular case?

17 THE ARBITRATOR: Not in Wilenitz. In  
18 some other case.

19 MR. JACOBS: Right.

20 THE ARBITRATOR: In Case No. 3.

21 But the profit withdrawal report and  
22 hearing will, in part, deal with that; is  
23 that correct?

24 MS. CHAITMAN: Only with respect to  
25 the profit withdrawal issue, not with respect

1 to other issues.

2 MR. JACOBS: Right.

3 MS. CHAITMAN: So the thing is that  
4 the issue of -- I'm sure you've had  
5 experience with this on business records  
6 exception, can you admit records of a  
7 fraudster? Only if they have indicia of  
8 reliability.

9 So this is what this interrogatory is  
10 going to. If there is evidence that the  
11 records -- the whole set of records do not  
12 carry those indicia of reliability, then  
13 that's a reason that they shouldn't be  
14 admitted.

15 MR. JACOBS: Your Honor, you've just  
16 seen in three cases just today Ms. Chaitman  
17 has conceded the reliability as to the cash  
18 activity of the account. She's made no  
19 showing that the books and records of the  
20 debtor are not 100 percent reliable with  
21 respect to cash activity in this case or any  
22 other case.

23 On that basis, an order compelling the  
24 trustee to conduct an investigation that is  
25 essentially a wild goose chase looking for a

1 needle in a haystack across every single  
2 customer account that existed at any point in  
3 time --

4 THE ARBITRATOR: Well, but --

5 MR. JACOBS: -- has no rational  
6 bearing to the relevance of the claims and  
7 defenses in this case. The request is asking  
8 for us to investigate every single customer  
9 statement for all periods of time in every  
10 single case.

11 THE ARBITRATOR: I read it slightly  
12 differently. It's not in the present or  
13 future tense; it's in the past tense.

14 It's "every error you found." And  
15 there's one person who said the records were  
16 inaccurate as to reflecting two \$25,000  
17 withdrawals where the customer said it was  
18 only one, and maybe that's right, maybe  
19 that's wrong, and maybe you have or have not  
20 investigated that to date.

21 MR. JACOBS: Right.

22 THE ARBITRATOR: And I recognize that  
23 we're dealing with tens of thousands of  
24 records. But it's not requiring that you go  
25 out and do that now; it's asking that you

1 identify those instances you found in the  
2 past.

3 I'm not saying that that's not a  
4 considerable task and potentially an unduly  
5 burdensome task, but it's narrower than the  
6 way you're reading it, to my mind.

7 MS. CHAITMAN: And --

8 THE ARBITRATOR: Let me --

9 MR. JACOBS: What's the  
10 articulation --

11 THE ARBITRATOR: Let me put it in a  
12 criminal context. And if I'm using case law  
13 that you're not familiar with, tell me and I  
14 won't go down that road.

15 But if this were the Madoff criminal  
16 case and you were the prosecutor saying,  
17 everything Madoff did was a fraud and I can  
18 prove it by introducing these records of his  
19 business under the business records  
20 exception, and the witness we're getting on  
21 the stand, your expert or somebody else to  
22 say these records are pristine, they  
23 accurately reflect everything, under Brady,  
24 you'd have an obligation as a prosecutor to  
25 disclose, well, no, there were these ten

1 instances where the records were inaccurate.

2 MR. JACOBS: Right.

3 THE ARBITRATOR: So Ms. Chaitman, in  
4 effect, is looking for Brady material.

5 MR. JACOBS: Right, but that's not the  
6 standard that governs discovery in this civil  
7 action. The standard is Rule 26, which  
8 cabins relevance by -- with proportionality.  
9 The discovery sought must be relevant and --  
10 it's not "or" -- and proportionate. And  
11 proportionate is adjudged by the needs of the  
12 case.

13 In this case, we have represented --  
14 in this case with these defendants and these  
15 accounts, we have not found any inaccuracy in  
16 the records. In our -- in Greenblatt and  
17 Lisa Collura's global reports, which we will  
18 issue in this case and which we issue in  
19 every case, they do a global reconciliation  
20 of the customers' statements and find with a  
21 near 100 percent certainly that, with respect  
22 to wherever independent verification is  
23 available, those records are reliable and  
24 accurate with nearly 100 percent of the time,  
25 which is I guess sort of the flip of what

1           you're asking us to do -- or the request is  
2           asking us to do.

3                   My question would be, how can I  
4           possibly, with a team of a hundred attorneys  
5           and numerous -- dozens of consultants, over  
6           an eight-year period go back and reconstruct  
7           every instance of every time we found a typo  
8           on a page that may, quote, qualify as an  
9           error, which is undefined and vague here?  
10          That would take us weeks, months, years to do  
11          for what utility or benefit?

12                   THE ARBITRATOR: I agree with you that  
13          somebody told me, probably off the record,  
14          that there were 64,000 customers.

15                   MS. CHAITMAN: I just told you that.

16                   THE ARBITRATOR: That there's no need  
17          to either prospectively or retrospectively  
18          identify every error in the records that  
19          relate to 64,000 customers.

20                   But at trial, to the extent there is a  
21          trial, Ms. Chaitman, the trustee is only  
22          going to offer the business records that  
23          relate to these 92 customers of yours. Judge  
24          Bernstein firmly took the view that even if  
25          there are gross inaccuracies as to other

1 customers, that that's irrelevant.

2 I understand you say that that would  
3 call into question the accuracy of the  
4 records as a whole. This is not the  
5 traditional case where somebody's going to  
6 get up and say, I'm the treasurer of Bernard  
7 Madoff Securities and the records are  
8 accurate. Although I suppose maybe there's  
9 somebody who was prosecuted criminally, but  
10 could so testify, saying that the records of  
11 the fraud are accurate.

12 But why should I require that Request  
13 No. 2 be answered except as to your 92  
14 clients? And then the same way you're having  
15 trouble getting information out from your  
16 expert or accountant or whoever it is who's  
17 doing the summary information about taxes, I  
18 think it was taxes, here there's going to be  
19 an expert report which will, to the extent  
20 there are errors or inconsistencies, disclose  
21 items; is that accurate?

22 MR. JACOBS: I'm sorry. I'm not sure  
23 I understand the proposition. There will be  
24 an expert report --

25 THE ARBITRATOR: There's going to be

1 one or more experts who, for Mr. DiGiulian,  
2 to pick somebody who doesn't concede that the  
3 records correspond to his records -- for the  
4 DiGiulian client of Ms. Chaitman, there's  
5 going to be one or more experts who are going  
6 to say, we looked at the books and records  
7 that relate to this defendant.

8 MR. JACOBS: Right.

9 THE ARBITRATOR: They show the  
10 following.

11 MR. JACOBS: Right.

12 THE ARBITRATOR: And we have not found  
13 any inconsistent records.

14 MR. JACOBS: That's correct. And I  
15 think the way I would put that is that we  
16 will put forth proof on our affirmative  
17 obligation and -- which is our burden  
18 supporting all of our claims. And I can tell  
19 you that -- I can represent for the record  
20 right now that with respect to all of  
21 Ms. Chaitman's clients, we have found no  
22 errors or we wouldn't have sued them. Or we  
23 wouldn't have -- we would have disclosed that  
24 Bernard Exhibit B would reflect a correction  
25 of that error.



1                   There are no errors in any of  
2                   Ms. Chaitman's cases that we are aware of.  
3                   Now, discovery might yield a different  
4                   outcome, which is why we affirmatively asked  
5                   for all the discovery we've been discussing  
6                   earlier in the day.

7                   If there are transactions or deposits  
8                   or withdrawals or other factual issues that  
9                   are disputed and Ms. Chaitman has proof of  
10                  that, on behalf of her clients, she has an  
11                  obligation to produce it. And we will  
12                  consider it and either amend the claim  
13                  appropriately or we will litigate it in  
14                  court, and the judge will decide whose proof  
15                  carries the day.

16                  But we shouldn't have to -- but  
17                  Ms. Chaitman must, under Rule 26 and under  
18                  the relevant law, articulate a basis to  
19                  challenge our proof that's specific and  
20                  not -- and not a fishing expedition across  
21                  unrelated, irrelevant other customers whose  
22                  deposits and withdrawals aren't at issue in  
23                  this case.

24                  THE ARBITRATOR: What I'm going to do  
25                  is limit Request No. 2 to Ms. Chaitman's 92

1 clients. I gather that, thus limited, your  
2 response is likely to be, we haven't found  
3 such errors.

4 MR. JACOBS: Right.

5 THE ARBITRATOR: It also follows that  
6 at the expert discovery stage in each of her  
7 cases, you may find some errors. You may  
8 not, but it's conceivable that you may find  
9 some. And granted that will occur at the  
10 expert discovery stage rather than the fact  
11 discovery stage, but I will reserve decision  
12 as to whether that permits her to then seek  
13 further discovery.

14 MR. JACOBS: Okay.

15 MS. CHAITMAN: I would like just to  
16 point out --

17 MR. HUNT: Can I make one -- sorry to  
18 interrupt.

19 Are you done, moving on to the next  
20 one?

21 MS. CHAITMAN: No, I was going to say  
22 something about this.

23 MR. HUNT: I was going to make -- for  
24 the record, DiGiulian actually has stipulated  
25 to the accuracy and --

1 THE ARBITRATOR: I was just using a  
2 name.

3 MR. HUNT: Good.

4 THE ARBITRATOR: The Maas account. I  
5 wasn't trying to be specific.

6 MR. HUNT: I didn't think so, but I  
7 didn't want an inconsistent record.

8 MS. CHAITMAN: The -- in fact, one of  
9 my clients extraordinarily had records going  
10 back and had an original check that Madoff  
11 had sent her that she hadn't cashed. So her  
12 account was charged with that amount, but she  
13 hadn't actually withdrawn it. So that was an  
14 error. And --

15 MR. JACOBS: That's not an error in  
16 our books and records. That's back --

17 MS. CHAITMAN: It showed up as a  
18 withdrawal on her statement.

19 THE ARBITRATOR: Depends on the  
20 accounting system you use, I suppose, and  
21 that's --

22 MS. CHAITMAN: But that's the kind of  
23 thing. If they don't count that as an error  
24 when a check is not cashed --

25 MR. JACOBS: How would we know if the

1 check was cashed or not unless Ms. Chaitman  
2 produces the discovery which we asked for,  
3 which are those bank statements and  
4 confirmation --

5 THE ARBITRATOR: Really the request is  
6 list every single factual error of which you  
7 are aware. Your point is you were unaware of  
8 that --

9 MR. JACOBS: Right.

10 THE ARBITRATOR: -- despite a  
11 good-faith effort.

12 MR. JACOBS: It's also --

13 THE ARBITRATOR: And I think -- you've  
14 been harping on proportionality. I think  
15 I've dealt with that by limiting the universe  
16 to the 92 accounts.

17 MR. JACOBS: Okay.

18 THE ARBITRATOR: And if at the expert  
19 discovery stage, it turns out that there are  
20 a number of errors, then, as I said, I'll  
21 deal with that at that stage.

22 MR. JACOBS: Okay.

23 THE ARBITRATOR: Okay. What's next?

24 MR. JACOBS: I think that same ruling  
25 would apply to --

1 THE ARBITRATOR: 2, 3 and 5?

2 MR. JACOBS: Let me --

3 THE ARBITRATOR: Ms. Chaitman had 2, 3  
4 and 5 as a page, basically.

5 MR. JACOBS: Right. I'm not sure that  
6 I even can understand Request 3 as drafted.  
7 I don't know what this means, to list every  
8 single factual error asserted by any Madoff  
9 or BLMIS customer in their statements. How  
10 does a customer assert an error in their -- I  
11 just think -- I don't understand what this  
12 request is seeking.

13 MS. CHAITMAN: Let me explain.

14 What I meant to request is that if  
15 Mrs. Jones asserts that on her December 31,  
16 2001, statement there's an error and she  
17 brings that to your attention and she's  
18 correct, I'm asking you to produce the  
19 documents that indicate that.

20 THE ARBITRATOR: Well, I -- there's  
21 two ways in which this could be read. One  
22 is -- well, building on what Ms. Chaitman  
23 said, the bringing it to the attention of  
24 somebody could be in realtime such that  
25 somebody in 2007 wrote a letter to Madoff and

1 said, I never cashed that check so your  
2 accounting is wrong.

3 Or it could be in connection with the  
4 bankruptcy proceeding. In connection with  
5 the bankruptcy proceeding, obviously you know  
6 if somebody has asserted such a contention,  
7 Ms. Chaitman. So really it's the sort of  
8 realtime complaints.

9 And, again, I'm going to limit that to  
10 the 92 accounts at issue.

11 MR. JACOBS: Thank you, your Honor,  
12 but at this juncture, I really do feel  
13 compelled to assert for the record that we  
14 object to the fact that we appear to be  
15 having a mini hearing here as to the  
16 admissibility of the trustee's records.

17 All of these records are proof of  
18 claims that are going to be litigated, and a  
19 court of law is going to determine if they  
20 have errors or not. This isn't something --  
21 an error is -- what does that mean? Does  
22 that mean do I have to disclose an error if I  
23 lose in court? Do I have to disclose -- is  
24 it an error if a defendant denies it in her  
25 answer? Is it an error if competing, but

1           unresolved factual evidence is produced?

2                       These requests are simply nonsensical.

3           And I have to say, notwithstanding your  
4           order, respectfully, on number 2, with  
5           respect to number 2 and 3, it's not my burden  
6           to prove that these records are correct  
7           before I have to prove them.

8                       And it's not my burden to make  
9           determinations as to whether a court of law  
10          is going to determine that my proofs are  
11          legally sufficient or not before those  
12          determinations have been made.

13                      THE ARBITRATOR: Nor am I requiring  
14          that. And it's not a prospective  
15          undertaking; it's your knowledge -- when I  
16          say "you," I mean the trustee -- as of today.  
17          So if, for example, in the 92 accounts,  
18          you're aware today that there was some  
19          accounting miscalculation, you would have to  
20          produce that information to Ms. Chaitman.

21                      As I said, as a practical matter,  
22          you're likely only to get to that stage when  
23          I guess it's -- Collura opines about a  
24          particular account.

25                      MR. JACOBS: Right.

1 THE ARBITRATOR: And what the sequelae  
2 of that would be is something I reserve  
3 decision on. So I think you're worrying  
4 about something that hasn't happened and may  
5 not happen.

6 MR. JACOBS: I guess I'm still stuck  
7 on this concept of error. I mean, our -- we  
8 construct our Exhibit Bs based on what we  
9 believe to be true and correct based on our  
10 investigation.

11 THE ARBITRATOR: So your --

12 MR. JACOBS: It's a combination of  
13 account statements, bank transfer records,  
14 third-party records and other materials. So  
15 we are not going --

16 THE ARBITRATOR: And if --

17 MR. JACOBS: -- pursue, for example,  
18 on a withdrawal that we don't have a  
19 good-faith basis to believe occurred, whether  
20 the check was cashed or not, whether we're  
21 right or not, whether -- it didn't happen.

22 Because we painstakingly constructed  
23 each of our complaints with respect to each  
24 account and our net equity analysis, with the  
25 help of our experts and consultants, in



1 making determinations on which claims to  
2 pursue and which ones not to pursue.

3 THE ARBITRATOR: Which is my point,  
4 that your answer may well be, now that I've  
5 narrowed it to the 92 accounts, we are aware  
6 of no such errors at this time.

7 MR. JACOBS: Okay.

8 THE ARBITRATOR: Maybe there are some  
9 that you're aware of, but it's equally  
10 plausible that you're not aware of any such  
11 errors.

12 So that was 3. And 5 is the one --

13 MR. JACOBS: The number 5 we discussed  
14 at length with Judge Bernstein, and he agreed  
15 that we find this nonsensical. I don't know  
16 what "riddled with fraud" means, if this is a  
17 challenge to the admissibility of our records  
18 that's not currently before your Honor and  
19 not properly ruled upon at this juncture.

20 What we have maintained is that -- and  
21 what our experts will maintain, as we've  
22 discussed at length today, is that the cash  
23 activity reflected in the customer statements  
24 is accurate and reliable, but the stock  
25 trading activity included in those documents

1 and others that were provided to customers  
2 reflect fraudulent trading -- purported  
3 trading activity that never occurred.

4 So that may be where this "riddled  
5 with fraud" expression is coming from, but  
6 put together in the context of this request,  
7 it's nonsensical, and we shouldn't be  
8 required under any theory to respond.

9 THE ARBITRATOR: Well, as to Request  
10 No. 5, there's two different versions of it.

11 MR. DEXTER: I think it was changed to  
12 "permeated."

13 THE ARBITRATOR: Yes, that's the point  
14 I was about to make.

15 And I assume that that's a quote from  
16 the complaint.

17 MS. CHAITMAN: It's a quote from the  
18 trustee's expert, who said that.

19 MR. JACOBS: If it's a quote from --

20 THE ARBITRATOR: But obviously it's,  
21 from the trustee's perspective, lifting the  
22 words out of context.

23 MR. JACOBS: At a minimum, it's  
24 lifting the words out of context. It's  
25 completely divorcing the words of any context

1 and putting it in a request that, when read,  
2 is not coherent.

3 THE ARBITRATOR: Well, let's not  
4 characterize it pejoratively. The reports  
5 presumably are going to be the reports of  
6 Collura and -- I'm not quite sure what  
7 Greenblatt talks about, but maybe Greenblatt.

8 And as to certain of her customers, to  
9 the extent she stipulates to the accuracy of  
10 the deposits and withdrawals, there's no  
11 reason why you should have to answer Request  
12 No. 5.

13 But to the extent she does not so  
14 stipulate, it seems to me those reports will  
15 be the expert reports. And the expert  
16 reports will reference, I would imagine, the  
17 documents upon which the expert bases his or  
18 her conclusion.

19 So you may be getting that later than  
20 you wished, Ms. Chaitman, but you will be  
21 getting it.

22 MR. JACOBS: And I can also add that  
23 the case -- the case-wide documentation  
24 underlying those reports is already in Data  
25 Room 1, which has been made available. That

1 would include all of the bank transfer  
2 records that we have, which are labeled by  
3 producing bank and the appropriate subfolder  
4 so it's easy to find.

5 There's also -- as we told  
6 Ms. Chaitman, there's a full universe of  
7 every customer's statement. There's a full  
8 set of all the customer statements that we  
9 have in the data room. And while we've made  
10 that available in connection with our expert  
11 report -- while we may disagree it's relevant  
12 to the issue of whether this defendant  
13 received transfers, as we've said, it was  
14 considered by our expert in connection with  
15 his conclusions. And it's in the data room,  
16 so you can do with it what you see fit. It's  
17 made available to you.

18 THE ARBITRATOR: Let's move on.

19 MS. CHAITMAN: Okay.

20 THE ARBITRATOR: What's next?

21 MS. CHAITMAN: We need to go to 4,  
22 your Honor, "List every profit withdrawal  
23 entry on a customer statement where there's  
24 no documentary evidence that the customer  
25 requested to receive profit" --

1 THE ARBITRATOR: I'm sorry. Which  
2 number?

3 MS. CHAITMAN: Number 4. We skipped  
4 4. We went from 3 to 5.

5 THE ARBITRATOR: Right.

6 MR. JACOBS: Your Honor, this is again  
7 the problem with doing these requests  
8 theoretically across cases with -- divorced  
9 from a factual context. There are no PW  
10 transactions in this case. But even if there  
11 were, Ms. Chaitman has all of this discovery  
12 already in connection with the PW proceeding.

13 I'll stipulate that it can be  
14 deemed -- it's deemed produced in this or in  
15 any other case where PW is an issue. That  
16 discovery was exhaustive. There were expert  
17 reports exchanged. There were documents  
18 underlying those reports exchanged. She has  
19 all of it already.

20 So it's not relevant to this case, but  
21 even if it were, I would agree to deem it  
22 produced in this case so we don't have to go  
23 through the charade of producing it again.

24 THE ARBITRATOR: Let me just say that  
25 my marginal note to myself was "Going to be

1 addressed in PW litigation," and I didn't  
2 have a question mark after it so --

3 MS. CHAITMAN: No, but the answer  
4 is -- the answer is no because Judge  
5 Bernstein's order specifically provided that  
6 the profit withdrawal litigation was only for  
7 people who asserted SIPA claims, but were not  
8 defendants in claw-back actions. So he  
9 segregated it. So no one who was a defendant  
10 in a claw-back action had the right to  
11 participate in the profit withdrawal  
12 litigation.

13 THE ARBITRATOR: Let me ask a  
14 different question, which is, suppose  
15 Customer Jones never requested a profit --  
16 let me go back a step.

17 Are we using "profit withdrawal" as a  
18 term of art to mean something that's a subset  
19 of withdrawals generally?

20 MS. CHAITMAN: Yes. These were  
21 withdrawals that occurred before 1992 in  
22 general. There were some afterwards up to  
23 1997, but the -- they were reflected on  
24 statements from 1980 or '81 and some up to  
25 1997. Most ended in 1992. It was a specific

1 entry.

2 THE ARBITRATOR: And were these  
3 customers who were getting all of the monthly  
4 profits shown or quarterly were getting  
5 profit withdrawals or what?

6 MS. CHAITMAN: Under this trading  
7 strategy, they would get the profit on a  
8 specific arbitrage transaction when the money  
9 hit the account. And the evidence in the  
10 profit withdrawal litigation has been that  
11 people were not sent profit withdrawals  
12 unless they asked for them in writing.

13 So what Collura did with respect to  
14 the profit withdrawal participants, which was  
15 a subset that excluded all the claw-back  
16 defendants, is, she produced a report which  
17 said, as to the following 3,000 people,  
18 whatever it was, there is no documentary  
19 evidence within Madoff's records that these  
20 people requested or received a profit  
21 withdrawal.

22 So what I'm asking for -- I don't  
23 believe I have to wait for expert reports on  
24 this. I'm asking whether there is any  
25 documentary evidence to support the profit

1           withdrawals on the claw-back defendants'  
2           statements.

3                   Now, obviously it doesn't reflect --  
4           it didn't affect the three that we're  
5           specifically talking about, but these  
6           interrogatories were intended to be served on  
7           everyone.

8                   THE ARBITRATOR: I'm still not getting  
9           why, as to the claw-back defendants, this is  
10          relevant or why they're carved out.

11                  MS. CHAITMAN: Because Judge Bernstein  
12          did that. Honestly I think he shouldn't  
13          have, but he did. And so the factual --

14                  MR. JACOBS: That is actually defense  
15          counsel's request, to carve out, so the PW  
16          proceeding is separate from the adversary  
17          proceeding.

18                  THE ARBITRATOR: I understand -- maybe  
19          I misunderstand, but my understanding was  
20          that Judge Bernstein is looking for issues  
21          that can be dealt with universally and that  
22          one of those is the profit withdrawal issue  
23          and that, therefore, he's having an omnibus  
24          hearing or litigation, whatever you want to  
25          call it, with respect to that.



1 Is that correct?

2 MR. JACOBS: That is correct, but it's  
3 only -- I agree with Ms. Chaitman. By court  
4 order, it's only applicable to the claimants.

5 MS. CHAITMAN: Not the claw-back  
6 defendants.

7 MR. JACOBS: And those are customers  
8 who we didn't necessarily sue, but who filed  
9 claims with the trustee. We denied the  
10 claim, for whatever reason, and they  
11 objected. And we're now litigating the  
12 objections. And part of that objection is  
13 that the trustee didn't properly credit these  
14 PW transactions. So it gets unfolded --

15 THE ARBITRATOR: Let me just be --  
16 before you say whatever it is you were about  
17 to say, Ms. Chaitman, if the trustee  
18 stipulates that all of the discovery in the  
19 PW litigation will be made available to you  
20 here, doesn't that go a long way to resolving  
21 this?

22 MS. CHAITMAN: No, because there was  
23 no discovery in the PW proceeding relating to  
24 the claw-back defendants. That was the  
25 whole -- I don't -- I don't recall why it was

1 done that way, but my impression was that  
2 Judge Bernstein ordered that, that if you  
3 were a claw-back defendant and you challenged  
4 a profit withdrawal, you had to do it in the  
5 claw-back discovery. So that's why we're  
6 asking this specific information.

7 MR. JACOBS: I think I can address  
8 this. There's two separate types of  
9 discovery that, in my mind, related to PW  
10 that would be relevant in an adversary  
11 proceeding that has PW in a relevant account.

12 One is, in the fact discovery stage,  
13 all of the materials we already produced,  
14 which are the account statements, the bank  
15 transfer records and the account opening and  
16 closing documents and all of the  
17 correspondence, which would contain all of  
18 the evidence we have with respect to those  
19 sued-upon accounts of how those PW  
20 transactions should or would be or were  
21 characterized. Right.

22 Secondly, there will be -- PW will  
23 likely be addressed by our experts later on  
24 down the road as part of their analysis that  
25 might fill any factual gaps for which there's

1 no record one way or another.

2 So discovery -- we are already  
3 affirmatively producing any PW-related  
4 materials that would be relevant in any given  
5 adversary proceeding specific to those  
6 defendants in the case. Then I anticipate  
7 we'll also be --

8 THE ARBITRATOR: If somebody  
9 affirmatively requested, by way of a letter,  
10 for example, profit withdrawal, that also --

11 MR. JACOBS: That's a produced --

12 THE ARBITRATOR: -- to the extent you  
13 had it, that would be part of this CAD?

14 MR. JACOBS: Correct. So our initial  
15 disclosure production, we do this without  
16 even a request. It just goes out the door.  
17 We repackage it. It's the core account  
18 documents, which are customer statements and  
19 other similar types of reports that BLMIS  
20 generated over time, reflecting all of the  
21 customer account activity for all of the  
22 relevant accounts.

23 So that would be the sued-upon  
24 accounts and any accounts from which the  
25 sued-upon accounts got inter-account

1 transfers.

2 We also produced the bank transfer  
3 records, which would be JPMorgan, in most  
4 instances, records of cash activity coming to  
5 and leaving BLMIS's account to or from the  
6 defendants.

7 We also produced a customer file for  
8 those accounts that BLMIS maintained, which  
9 includes all the correspondence. So if  
10 Defendant X wrote a letter to Bernard Madoff  
11 instructing that dividends on certain stocks  
12 held in my account should be -- result in a  
13 check paid to me, that would be produced.  
14 All of that's produced in fact discovery  
15 right out of the gate.

16 THE ARBITRATOR: And the only  
17 carve-out is the adversary proceedings.

18 MR. JACOBS: The carve-out from the PW  
19 claims proceeding?

20 THE ARBITRATOR: Yes.

21 MR. JACOBS: Yes, the adversary  
22 proceedings are carved out from that.

23 THE ARBITRATOR: Ms. Chaitman has 92  
24 of those -- just give me a sense of scale,  
25 how many adversary proceedings are still

1 kicking around?

2 MR. JACOBS: We have around 350 or so  
3 still active, I believe.

4 MS. CHAITMAN: You told me 300 a  
5 couple of months ago.

6 MR. JACOBS: It's around 300. I might  
7 be off.

8 THE ARBITRATOR: Well, so as to  
9 Ms. Chaitman's clients, she's going to get  
10 that at the expert discovery stage, and the  
11 underlying documents from which you could  
12 infer the answer have been produced.

13 What she's not getting by way of that  
14 is, for the other 208 or so accounts, that  
15 information, but I think the relevance of it  
16 as to the other 208 is dubious, at best.

17 So I'm not going to require an answer  
18 to Request No. 4 at this time.

19 MR. JACOBS: Thank you, your Honor.

20 MS. CHAITMAN: Okay. Request No. 6  
21 where I have some requests that go to the  
22 nature of the outstanding claims, so I think  
23 you can rule on them as a body. And I just  
24 want to explain to you why we think it's  
25 important.

1 THE ARBITRATOR: 6 through 9 deal with  
2 the net equity issue, as I understand it;  
3 right? Where you say the court didn't have a  
4 full --

5 MS. CHAITMAN: It didn't have a full  
6 picture --

7 THE ARBITRATOR: Factual record.

8 MS. CHAITMAN: It didn't have a full  
9 factual record when it made the  
10 determination. And I would like -- obviously  
11 these cases are going to go back to the  
12 Second Circuit and possibly even to the  
13 Supreme Court. And I would like to have a  
14 full factual record.

15 So, for example, if the only claims  
16 that are left are claims of the huge feeder  
17 funds or something like that, then I think  
18 that that's part of the factual record that  
19 the courts that look at this should be aware  
20 of. And it's readily available to the  
21 trustee because he has a distribution list.  
22 So all he has to do is give us the  
23 distribution list.

24 And at some point in time, the  
25 subcommittee of the Commercial Financial

1 Services committee and the house had  
2 requested this information of SIPA. And it  
3 had been delivered to Congressman Scott  
4 Garrett as of a certain point in time. I'm  
5 simply asking that that be updated.

6 THE ARBITRATOR: The only part of this  
7 that I'm inclined to grant, but you may have  
8 the information already, is in Request No. 9  
9 or maybe Request No. 6 or both; but  
10 basically, I think you're entitled to  
11 aggregate claim information, but I assume the  
12 trustee reports that periodically.

13 MR. JACOBS: That's reported in every  
14 single interim report that we file. It's  
15 also regularly updated on the trustee's  
16 website at [www.madofftrustee.com](http://www.madofftrustee.com). So with  
17 the click of a mouse, all of that information  
18 is in realtime, updated and available to  
19 Ms. Chaitman.

20 And beyond that, we rigorously object  
21 to having to produce any additional  
22 materials. Judge Bernstein has explicitly  
23 rejected this legal defense. It's really an  
24 attack on the trustee's standing under SIPA  
25 78fff-2(c)(3). The defendants are planning

1 to argue that he has enough money to fulfill  
2 all the outstanding claims in the customer  
3 fund.

4 And that's simply not true at the time  
5 this defense was raised. It was not true at  
6 the time Judge Bernstein rejected explicitly  
7 this legal argument and his omnibus decision  
8 on the motion to dismiss. And it's not true  
9 today.

10 So there's no legal basis that would  
11 allow for an order determining that any of  
12 this discovery is relevant.

13 THE ARBITRATOR: Well, as I said, I'm  
14 not going to allow it except to the extent  
15 that it's aggregate information. And that is  
16 publicly available. So the short answer is  
17 I'm not going to allow it. When the Second  
18 Circuit reverses based on that ruling by  
19 Judge Bernstein and me, then I guess we'll be  
20 back at it again.

21 What's next?

22 MR. HUNT: One of the drabs that comes  
23 in for...

24 MR. JACOBS: I believe that was 6  
25 through 9.



1 THE ARBITRATOR: Right.

2 Ms. Chaitman?

3 MS. CHAITMAN: So 10 --

4 THE ARBITRATOR: 10 is where I have to  
5 go to the other set because you substituted.  
6 It's not asking about the fee arrangement  
7 anymore. It's --

8 MS. CHAITMAN: No, it's here. Here it  
9 is.

10 THE ARBITRATOR: I've got it here.  
11 List of every allowed claim, is that it?

12 MS. CHAITMAN: Yes.

13 THE ARBITRATOR: I think -- how is  
14 that different than 6 through 9?

15 MS. CHAITMAN: It's not. I agree.

16 THE ARBITRATOR: So the ruling is the  
17 same.

18 MR. JACOBS: I'm sorry. Which number  
19 were we just looking at?

20 THE ARBITRATOR: Number 10.

21 MS. CHAITMAN: So number 11, we're  
22 asking for, "For each year of Madoff's  
23 operation, state all facts on which you base  
24 your position that Madoff did not purchase  
25 securities for his investment advisory

1 customers and produce the documents on which  
2 you base your position."

3 This goes to one of the most important  
4 issues in the case for anyone who was a  
5 long-standing Madoff customer.

6 THE ARBITRATOR: This is the dispute  
7 between the trustee's position and  
8 Mr. Madoff's testimony and Mr. DiPascali's  
9 plea.

10 MS. CHAITMAN: Right, but the point  
11 is, we have a right to the production of  
12 these documents. This goes to a core issue  
13 in the case.

14 THE ARBITRATOR: Let's take the first  
15 part of it first. I think that it's not  
16 unduly burdensome and is relevant to have you  
17 set forth the trustee's position, which I  
18 assume can be done in a paragraph.

19 MR. JACOBS: Your Honor, this is  
20 exactly the subject of Bruce Dubinsky's  
21 report. We intend to meet our burden of  
22 proof through an expert that we proffered in  
23 this case. We provided Ms. Chaitman with an  
24 early production of that report, which is our  
25 answer to this request. It's not -- it is

1 absolutely, given the complexity of the fraud  
2 that occurred, not something we can reduce to  
3 a paragraph.

4 THE ARBITRATOR: So the answer may be,  
5 see Dubinsky report at pages whatever through  
6 whatever.

7 MR. JACOBS: Right. I believe that's  
8 what we did answer. We said the request was  
9 premature because it was the subject of  
10 expert analysis and it will be disclosed  
11 pursuant to the case management order.

12 THE ARBITRATOR: I looked at the  
13 request, but not the --

14 MR. JACOBS: I'm not looking at it  
15 right now either, but I can't imagine we said  
16 anything different.

17 MS. CHAITMAN: I have the response.  
18 Do you need the response, Judge?

19 THE ARBITRATOR: No, I've got it here.

20 MR. JACOBS: "The trustee objects to  
21 this request on the grounds that it  
22 prematurely seeks to have the trustee  
23 disclose expert material well in advance of  
24 the deadline in the case," but that's the  
25 objection I'm making.

1 THE ARBITRATOR: Let me interject.

2 Off the record before you do that.

3 (Discussion off the record.)

4 MR. JACOBS: I'm happy to repeat that.

5 It was 78fff-2(c)(3).

6 THE ARBITRATOR: Start over.

7 MR. JACOBS: Please feel free to  
8 interrupt me any time.

9 THE ARBITRATOR: Let's -- back on the  
10 record.

11 There were a number of bases on which  
12 the trustee initially objected to Request  
13 No. 11, one of which is work product, the  
14 second of which is that Ms. Chaitman was  
15 asking for expert discovery materials  
16 prematurely, although that's now been waived  
17 by production of the Dubinsky report;  
18 correct?

19 MR. JACOBS: That's correct. So our  
20 initial objection referenced the upcoming  
21 report, which -- the disclosure of which was  
22 not yet due. Subsequently, in an effort to  
23 try to avert as many disputes as possible  
24 from coming to your attention or to the  
25 court's attention, we made -- we went ahead

1 and made an early production of that report  
2 in this case.

3 THE ARBITRATOR: But as to Request  
4 No. 11, as a matter of form, I think  
5 Ms. Chaitman is entitled to an answer  
6 certainly to the first part of this, which is  
7 "state all facts." And if it's done by  
8 referencing the Dubinsky report, so be it.

9 And in terms of producing the  
10 documents on which you base your position,  
11 are there any documents related to  
12 Ms. Chaitman's clients upon which Dubinsky  
13 bases his position that have not been  
14 produced?

15 MR. JACOBS: No. Absolutely not.

16 THE ARBITRATOR: In any of her 92  
17 cases?

18 MR. JACOBS: Correct.

19 THE ARBITRATOR: So I think that deals  
20 with Request No. 11.

21 MS. CHAITMAN: Well, I don't think it  
22 does because this is precisely the issue we  
23 were talking about before. The Madoff  
24 trading records -- to the extent that some of  
25 my clients' accounts go back to the 1980s,

1 the Madoff trading records have not been  
2 produced. And if the trading records were in  
3 stocks that appeared on my clients'  
4 statements, then my argument would be that  
5 this is evidence that Madoff was trading with  
6 respect to those accounts.

7 THE ARBITRATOR: But you're not asking  
8 for, in effect, civil Brady material. You're  
9 asking for the documents which support the  
10 trustee's position, not those which refute  
11 the trustee's --

12 MS. CHAITMAN: Right --

13 THE ARBITRATOR: -- position.

14 MS. CHAITMAN: -- I am, but the point  
15 is it's the converse.

16 THE ARBITRATOR: But the request is  
17 produce the documents that support your  
18 position.

19 MS. CHAITMAN: Right. But the point  
20 is, I don't think he has any documents. And  
21 that's why I think I'm entitled to a written  
22 answer to that effect. If there are no  
23 documents, let him say that.

24 THE ARBITRATOR: Well, so as to the --  
25 I'm going to limit this second part of this

1 to the 92 clients of Ms. Chaitman. And you  
2 can answer it by referencing the documents  
3 that you believe support your position, the  
4 underlying documents. It may be simply a  
5 reference to the CADs, but --

6 MR. JACOBS: Right. Well, I guess my  
7 problem with this, your Honor, is that  
8 Mr. Dubinsky provides about a hundred-page  
9 report that goes in-depth, in detail  
10 responding to this exact issue and talks  
11 about the analysis he conducted with respect  
12 to securities trading for the IA business and  
13 his conclusion there was no evidence of any  
14 securities trading on behalf of any IA  
15 customer at any given point in time.

16 He also talks at length about the  
17 relationship between the different functions  
18 of BLMIS, like -- enormous detail on the  
19 actual stock trading activities that did  
20 occur, all of those things, so --

21 THE ARBITRATOR: Is there an executive  
22 summary?

23 MR. JACOBS: What you're asking me to  
24 do is provide an executive summary of expert  
25 analysis, which I don't think is appropriate.

1 THE ARBITRATOR: I'm saying in his  
2 report, is there -- I understand it goes on  
3 for a hundred pages, but is there a  
4 two-paragraph version of it?

5 MR. JACOBS: I believe that there is  
6 at the beginning, yes. And there are  
7 certainly conclusions that are condensed as  
8 to the big picture, but I don't think it's  
9 appropriate for me, as an attorney, in  
10 responding to an interrogatory that goes  
11 to -- directly to our expert's analysis -- I  
12 don't think it's appropriate for me to have  
13 to find a way to paraphrase and package that  
14 analysis in a way -- you know, all of the  
15 facts he considered, all of the documents he  
16 considered, all of the work that he did to  
17 reach that executive summary conclusion is  
18 detailed at great length in the report. And  
19 I believe I should be entitled to defer to  
20 that report in lieu of an additional response  
21 to this question, which is what I would like  
22 to do.

23 THE ARBITRATOR: I'm not disagreeing  
24 with that.

25 MR. JACOBS: Okay. I was



1 understanding you were asking for a paragraph  
2 where I would just disclose specific  
3 documents --

4 THE ARBITRATOR: I was, but --

5 MR. JACOBS: -- and the like when I've  
6 hired an expert who does exactly that. I  
7 would like that expert to stand or fall on  
8 his analysis on his own, independent of my --  
9 you know, my characterization of that expert.

10 THE ARBITRATOR: I assume his report  
11 reveals the documents on which he relies.

12 MR. JACOBS: That's absolutely  
13 correct. And consistent with the litigation  
14 procedures order that I referenced earlier in  
15 the day, the e-Data Room 1, which we  
16 discussed at length today, was formed for the  
17 specific purpose of making available --

18 THE ARBITRATOR: Well --

19 MR. JACOBS: -- all of that material.

20 THE ARBITRATOR: -- so you may be able  
21 to answer this. I am going to require an  
22 answer. You may be able to answer it by  
23 reference to the report.

24 MR. JACOBS: Okay.

25 THE ARBITRATOR: And obviously I

1 haven't read the report. If there's some  
2 fine-tuning that's warranted, we'll deal with  
3 that down the road.

4 MR. JACOBS: Okay. Thank you, your  
5 Honor.

6 THE ARBITRATOR: Next.

7 MS. CHAITMAN: Okay.

8 MR. JACOBS: Number 12 is asking --  
9 again it's the same issue as Request No. 1.  
10 It's asking for -- it can be construed as  
11 asking for our work product of employees or  
12 other individual -- interviews of individuals  
13 in connection with those conclusions.

14 Now, I will say Mr. Dubinsky, in his  
15 report, does reference all of the materials,  
16 the depositions and examinations, he did in  
17 his investigation in arriving at his  
18 executive summary conclusions. That's all  
19 disclosed to the extent it's available.

20 Beyond that, I'm objecting to any  
21 additional disclosure on the basis that it's  
22 work product.

23 MS. CHAITMAN: So let me ask you  
24 something, Judge. Do you think it's  
25 appropriate -- let's just assume that, in

1 fact, the trustee's personnel have spoken  
2 with some of the Madoff traders, who insist  
3 that they actually did legitimate trades and  
4 that they did trades for the investment  
5 advisory customers.

6 Is it your position then that they  
7 don't have an obligation to disclose that to  
8 me?

9 THE ARBITRATOR: You're  
10 hypothesizing -- let me make sure I  
11 understand this -- that, by way of example,  
12 counsel or some other investigator that  
13 counsel retained spoke to employee X, who  
14 said, Madoff is right, it was trading. And  
15 then, without disclosing that, they hired  
16 Mr. Dubinsky and said, go off and do your own  
17 investigation.

18 MS. CHAITMAN: Right.

19 THE ARBITRATOR: And Dubinsky issued  
20 his report, and the trustee did not disclose  
21 to Mr. Dubinsky that there's evidence to the  
22 contrary.

23 MS. CHAITMAN: Right.

24 THE ARBITRATOR: Well, I think that if  
25 that were the case, Baker Hostetler and its

1 lawyers would have much more fundamental  
2 problems dealing with their ability to  
3 practice law in the future.

4 MS. CHAITMAN: But then why wouldn't I  
5 be entitled to this information?

6 THE ARBITRATOR: Because it's classic  
7 work product. They --

8 MS. CHAITMAN: But we have a need for  
9 it and we have no access to it. The trustee  
10 is in a unique position to be able to  
11 question the former Madoff employees.

12 MR. JACOBS: This request is coming as  
13 pure speculation as if things she presumes --  
14 things exist that are purely conjecture.  
15 There has to be an articulable need for  
16 specific information.

17 THE ARBITRATOR: Well, within these  
18 adversary --

19 MR. JACOBS: I can't make up things  
20 that didn't happen or that don't exist.

21 THE ARBITRATOR: Within these  
22 adversary proceedings, when does deposition  
23 discovery occur?

24 MR. JACOBS: In fact discovery for  
25 fact witnesses --

1 THE ARBITRATOR: Right.

2 MR. JACOBS: -- and then expert  
3 discovery for expert witness. Expert  
4 discovery has come and gone. In a number of  
5 Ms. Chaitman's cases, she hasn't deposed  
6 Mr. Dubinsky. She hasn't deposed  
7 Ms. Collura. She hasn't deposed  
8 Mr. Greenblatt.

9 Ms. Chaitman, other than Mr. Madoff,  
10 hasn't served any Rule 45 subpoenas for  
11 deposition testimony of any BLMIS employees  
12 or anybody else.

13 It's incumbent upon Ms. Chaitman to  
14 conduct her own investigation, further her  
15 speculative theories of the case. We don't  
16 have any obligation to do that for her. And  
17 to the extent we've done it, it's our work  
18 product, which is shielded from discovery.

19 THE ARBITRATOR: Well, I'm not  
20 unsympathetic -- and this is probably a  
21 speech I should have given at the beginning.  
22 I'm not unsympathetic to the fact that even  
23 with 92 clients, Ms. Chaitman's resources are  
24 considerably less than the trustee's.

25 And in appropriate circumstances, that

1 might warrant some shortcuts, but you have  
2 been given a list of all of the employees.  
3 And, again, Request No. 12, like at least one  
4 of the other requests, asks for attorney work  
5 product to the extent that it's going beyond  
6 what Mr. Dubinsky did. So I'm going to deny  
7 Request No. 12.

8 MS. CHAITMAN: Okay. Request No. 13,  
9 they actually ultimately produced the  
10 document.

11 THE ARBITRATOR: Right.

12 MS. CHAITMAN: "Explain the basis on  
13 which you determined that the defendants have  
14 no net equity and produce the front and back  
15 of each check."

16 Well, they've actually -- they  
17 produced those now.

18 Number 15, "Explain how you intend to  
19 establish that Madoff was insolvent in each  
20 year from 1960 to 2000 and produce all  
21 documents on which you will rely to establish  
22 insolvency."

23 What they've done is simply relied  
24 upon their expert.

25 THE ARBITRATOR: Right.

1 Who's the expert on this?

2 MR. JACOBS: It's Mr. Dubinsky. So  
3 his report is broad in insolvency  
4 collectively. And so all that discovery and  
5 that analysis has been made available in this  
6 case.

7 However, Judge Bernstein has raised a  
8 good question as to whether insolvency is any  
9 longer actually an element in our case -- in  
10 this case. I believe the answer is, no, it's  
11 not a burden of proof that we have with  
12 respect to the avoidance actions.

13 However, I expect at some point that  
14 will be addressed on motion or briefing after  
15 further briefing with Judge Bernstein.

16 But even if it is relevant, it's our  
17 same response as to the prior request,  
18 number 11, asking for the basis of the facts  
19 on which we state our conclusion that BLMIS  
20 was a fraud. It's the same answer as -- this  
21 is exactly the subject matter of  
22 Mr. Dubinsky's expert's analysis. We rely on  
23 his report in answering this interrogatory  
24 and all of the specific documentation he  
25 references, which we've made available in

1 e-Data Room 1.

2 MS. CHAITMAN: If they're relying on  
3 the Dubinsky report, then they're limited to  
4 the Dubinsky report, I assume, and they're  
5 not going to be able to introduce evidence  
6 beyond that. And if I get such an order,  
7 then I'm satisfied with it.

8 But I don't want a situation where  
9 they all of a sudden decide that, for  
10 whatever reason, Dubinsky's report is not  
11 reliable and now they're going to put in a  
12 whole bunch of evidence that I haven't had  
13 the opportunity to obtain in discovery.

14 MR. JACOBS: On insolvency?

15 MS. CHAITMAN: Yes.

16 MR. JACOBS: We have endeavored to  
17 make available everything we could possibly  
18 find that might be relevant to that subject  
19 matter. You have all --

20 THE ARBITRATOR: Is there anything  
21 beyond Dubinsky and the documents he relies  
22 on that you would proffer at trial?

23 MR. JACOBS: Absolutely not. And  
24 certainly if -- just as Ms. Chaitman stated  
25 earlier, if we obtain something from a third



1 party, we'll provide it and we'll add to the  
2 data room and we'll supplement a report, if  
3 needed. We'll make it available. But  
4 sitting here today, there's nothing to my  
5 knowledge that has not been made available on  
6 that subject.

7 THE ARBITRATOR: I think you can  
8 answer it by saying, "See Dubinsky report."

9 MR. JACOBS: Okay.

10 THE ARBITRATOR: What I know about  
11 bankruptcy could be written on the head of a  
12 pin, but I did look at 11 U.S.C. Section 548  
13 (a)(1)(A) versus (B). And it does appear  
14 that Judge Bernstein was right when he said  
15 that insolvency is not an issue when you have  
16 an intent to defraud.

17 MR. JACOBS: Right. And to explain  
18 why we address it affirmatively is, as I'm  
19 sure you know from the background materials  
20 we provided, the legal landscape of this case  
21 has changed for many defendants over time,  
22 including what we call the feeder fund in the  
23 bank cases, where we have a claim above and  
24 beyond just the avoidance actions we have  
25 here.

1 But also -- you know, insolvency also  
2 could be construed as being indirectly  
3 relevant to the fraud. Insolvency is an  
4 indicia of fraud. So that interrelates with  
5 these earlier periods of time. Whether it  
6 be -- so I'm making this point because the  
7 issue of whether stocks were traded or not is  
8 in and of itself not conclusive of whether  
9 there was a Ponzi scheme or a fraud.

10 So that is an important fact that I  
11 don't think gets conflated in the discovery  
12 disputes we're having. I just wanted to make  
13 it clear.

14 THE ARBITRATOR: Okay. Anything else  
15 on Wilenitz?

16 MS. CHAITMAN: Yes, number 16.

17 THE ARBITRATOR: Oh, I'm sorry.

18 MS. CHAITMAN: "Provide the gross  
19 trading volume by both number of shares  
20 traded and total dollar value for each of  
21 Madoff's operations broken down by the  
22 investment advisory business, the proprietary  
23 trading business, and the market-making  
24 business and produce the documents on which  
25 you base your responses."

1 MR. JACOBS: Now, our objection here,  
2 your Honor, is something you alluded to this  
3 morning with respect to the nature of the DTC  
4 records. Our answer -- our objection to this  
5 particular request is -- we have a number of  
6 objections, but first and foremost, this is  
7 an investigation that Ms. Chaitman is asking  
8 us to do to further her speculative theory  
9 that she wishes to advance to challenge the  
10 fraud.

11 We've made the underlying  
12 documentation that is available, all of it,  
13 to her. She can do that investigation  
14 herself. And under Rule 33(d) that is  
15 entirely appropriate and called for here.

16 And to be clear, we're not just saying  
17 go look in the data room. We have told her  
18 specifically where all of the documents she  
19 would need to attempt this manipulation of  
20 the data for her purposes can be found. And  
21 it's all in a single, segregated folder  
22 called DTC under the main subfolder data in  
23 the data room.

24 MS. CHAITMAN: But it doesn't because  
25 that's not -- that's 2002 on. And, again,

1 we're --

2 MR. JACOBS: Again, I'll reiterate,  
3 your Honor, Ms. Chaitman has everything we  
4 have and we've -- at the moment, that we know  
5 of. So we don't have any other documentation  
6 that we know of that would allow us to do  
7 this.

8 And the DTC records specifically --  
9 they don't track -- they show day-over-day  
10 difference, like in volume. So they'll show  
11 that X amount of a certain type of stock  
12 was -- existed and BLMIS held this day and  
13 then the next day it changed by this amount.

14 It's not exact -- the DTC records  
15 don't break out the data into these easily  
16 discernible buckets that Ms. Chaitman would  
17 like it to. And unfortunately we can't help  
18 that. So we can't do the impossible.

19 I don't know of any records that would  
20 allow us to assign this volume data that  
21 she's looking for by the proprietary trading  
22 versus investment advisory business. All I  
23 can say is that we have the DTC data that  
24 reflects trading done through BLMIS's only,  
25 and they only have one, DTC terminal for the

1 relevant period that we have.

2 And it's all been made available, and  
3 she can do whatever investigation she wishes,  
4 including, she can hire her own consultants  
5 to analyze that, she can hire her own expert  
6 to opine as to what that means. We shouldn't  
7 have to do that for her.

8 THE ARBITRATOR: I gather this goes to  
9 the notion that if two of the three  
10 activities of BLMIS were legitimate, the  
11 Ponzi scheme presumption should not apply.

12 MS. CHAITMAN: In part.

13 THE ARBITRATOR: Okay.

14 MS. CHAITMAN: And, in part, that the  
15 fraud did not start until 1992. So, you  
16 know, the DTC records, which unfortunately  
17 only exist from 2002 on, are not relevant.  
18 Once Mr. Madoff says the fraud started in  
19 1992, I'm not going to argue that it started  
20 later. Right. So I'm only focusing on the  
21 period prior to 1992.

22 But, again, that's very significant  
23 because a lot of my clients would be entitled  
24 to dismissal of the complaint if the court  
25 found that the fraud did not start until

1 1992.

2 THE ARBITRATOR: Is it correct,  
3 Mr. Jacobs, that you don't have the records  
4 for the period from 1980 to 1992, to your  
5 knowledge, that --

6 MR. JACOBS: It's the same records we  
7 were discussing earlier in the day that we  
8 will look for. I will update you in a week's  
9 time as to those efforts. I don't know of  
10 any that I confirm that exist beyond what is  
11 in the data room currently. And if we find  
12 them, we will produce them.

13 THE ARBITRATOR: But even if there are  
14 records, it seems to me that this is really  
15 an exercise -- I recognize that we're dealing  
16 with far more limited resources, but one that  
17 you, or an expert that you retain, would have  
18 to engage in; that it's not appropriate to  
19 have the trustee endeavor to do this,  
20 assuming that he could, in terms of breaking  
21 it down by business.

22 And I thought I heard Mr. Jacobs say  
23 that they couldn't do it even if they had the  
24 records. So I'm going to deny that request.

25 17? Is that --

1 MS. CHAITMAN: 17 I think we covered  
2 because that was the employees.

3 THE ARBITRATOR: Right. Well --

4 MS. CHAITMAN: I've got the list that  
5 specifies the area so --

6 THE ARBITRATOR: What else?

7 MS. CHAITMAN: -- I'm okay with that.

8 18. And this is "For each security  
9 listed on the defendants' account statements  
10 for each year from 1982 on, set forth the  
11 number of shares that BLMIS held."

12 And that again goes to the trading  
13 records. And just to be absolutely clear  
14 about this, the evidence of the trading could  
15 have existed in a number of different forms.  
16 It could have been actual computer-generated  
17 records where they kept track of the  
18 securities.

19 And considering the volume that Madoff  
20 was doing and the fact that it was  
21 market-making, it wasn't done on an exchange.  
22 So it was done privately, from firm to firm.  
23 And there were internal records -- there  
24 would be like a -- at the end of a day, there  
25 would be a netting out sheet, which would

1 have -- could go on for thousands of  
2 transactions. And then at the bottom, it  
3 would say Madoff owes the clearinghouse  
4 3 cents or the clearinghouse owes Madoff  
5 3 cents. So it could be that.

6 There are all different kinds of  
7 records that would have reflected the  
8 trading. And I just want it to be clear that  
9 I'm asking for that very broad scope, and  
10 we're talking about the period prior to 1992.

11 MR. JACOBS: Again, your Honor, the  
12 issue is the same as the issue I had with  
13 Request 16. All of the documents that  
14 evidence actual trading at BLMIS have been  
15 made available to Ms. Chaitman, in addition  
16 to the DTC records, as I mentioned.

17 We also subpoenaed the Chicago Board  
18 of Options Exchange. We also subpoenaed the  
19 Chicago Mercantile Exchange. We also scoured  
20 all the books and records of the debtor to  
21 see if there were any indicia of these  
22 out-of-the-market or weekend or black pools  
23 of liquidity -- trading that Mr. Madoff says  
24 he was doing. There's no evidence of that.  
25 And what there is we've made available.



1                   So what Ms. Chaitman would like to do  
2                   is -- if I understand her theory correctly,  
3                   is she would like to now argue that the --  
4                   there were stocks traded through the  
5                   proprietary trading arm of BLMIS on behalf of  
6                   specific IA customers.

7                   And I can tell you with all of the  
8                   documents that I currently know exist, which,  
9                   again, I reiterate she has, there is  
10                  absolutely no evidence that that ever  
11                  happened.

12                  And, furthermore, even if I wanted  
13                  to --

14                  THE ARBITRATOR: But she also has an  
15                  interim step, which is, if IBM was shown on  
16                  Customer Jones' statement and --

17                  MR. JACOBS: Right.

18                  THE ARBITRATOR: -- and BLMIS was long  
19                  IBM on that same date --

20                  MR. JACOBS: Right.

21                  THE ARBITRATOR: Tell me that.

22                  MR. JACOBS: Right. Well, it's my  
23                  understanding -- and, again, I don't want to  
24                  speak for our expert, but this is an issue  
25                  that, again, Mr. Dubinsky squarely addresses

1 in his report. It's not possible to match an  
2 inventory with a customer statement and say  
3 there's a match.

4 Because in, I believe, every instance  
5 that Mr. Dubinsky -- wherever he attempted to  
6 do that, where he tried, he failed. The  
7 records simply don't match. Because the  
8 customer statements were generated -- BLMIS  
9 had a shadow DTC terminal that wasn't  
10 connected to DTC, where we have offered  
11 proofs that they actually faked templates of  
12 what that trading activity would look like.

13 They populated it after the fact.  
14 They put that into their computer system and  
15 used that information to spit out the  
16 customer statements that reflects that  
17 purported, but fraudulent, trading activity.

18 And Mr. Dubinsky does painstaking  
19 analysis. Again, he's much smarter than me,  
20 so I'm not going to be able to articulate all  
21 the ways in which he does it, but he attempts  
22 to reconcile those customer statements with  
23 the DTC materials that we know do reflect  
24 actual trading that occurred, and he can't.

25 And the grand finality of his

1 conclusion is that there's no evidence of any  
2 instance where BLMIS was actually trading on  
3 behalf of a specific IA customer.

4 So, again, to answer that question, I  
5 would refer -- I would answer with  
6 Mr. Dubinsky's report and rely on that for  
7 the information contained therein.

8 THE ARBITRATOR: Well, and it's  
9 further complicated potentially by CUSIP  
10 numbers.

11 I'm going to deny Request 18 for the  
12 same reasons as Request 16.

13 Are we done with that motion? Is  
14 there a cross-motion on that?

15 MR. JACOBS: The cross-motion was for  
16 a protective order that we would like entered  
17 in any case where there's universal  
18 applicability to these requests. And I think  
19 that since your Honor considered these  
20 requests holistically across all types of  
21 cases, that an order entering that protective  
22 order across all of Ms. Chaitman's cases  
23 would be appropriate.

24 Because we didn't look at this through  
25 the lens of specifically the Wilenitz

1 defendants. We looked at it as if -- from  
2 the perspective of a defendant that hadn't  
3 conceded things on behalf of the account or  
4 any of those other issues.

5 So I think that in any instance where  
6 you have denied the discovery, your Honor, a  
7 protective order is appropriate across all of  
8 Ms. Chaitman's cases so we don't have to  
9 relitigate all of this again.

10 THE ARBITRATOR: Well, I think what I  
11 will instead do is have the general principle  
12 I outlined earlier, which is that it should  
13 apply to all cases that are the same, but it  
14 may be that -- without sitting and going  
15 through all 92 cases, it would be hard to say  
16 it applies to all of these requests and  
17 interrogatories as to all of her cases. So  
18 I'm not going to do that. It will be more of  
19 an --

20 MR. HUNT: Aspirational.

21 THE ARBITRATOR: That was the word I  
22 was trying to find.

23 -- aspirational statement than a  
24 ruling.

25 MR. JACOBS: Okay. Fair enough.

1 Thank you.

2 (Recess from the record.)

3 MS. CHAITMAN: Are we done except for  
4 depositions?

5 MR. HUNT: I think so.

6 MS. CHAITMAN: Okay. So, Judge, if I  
7 can just explain about the depositions. The  
8 trustee has noticed depositions in all of the  
9 cases. And in most of them, I haven't sought  
10 a protective order. In these I have, and I'd  
11 like to go through them and explain why.

12 THE ARBITRATOR: Sure.

13 MS. CHAITMAN: Some of them you may --  
14 Edyne Gordon, if I can take her, is the widow  
15 of the account holder. She had nothing to do  
16 with the account. She knew nothing about it.  
17 She lives in New Mexico. She produced  
18 whatever documents she had.

19 And with some of my elderly clients, I  
20 feel very protective of them. Because  
21 they've never been involved in litigation.  
22 It causes them unbelievable anxiety. And I  
23 just worry about them physically. And that's  
24 the category of people we're talking about.

25 And if there were a compelling factual

1 issue, I would feel differently about it, but  
2 the records are what they are. You've  
3 immersed yourself enough in the case that you  
4 see what the issues are. And there's no  
5 issue here of intent or -- I mean, there's  
6 nothing really that these people can add.  
7 That's why I moved for a protective order in  
8 these cases. I can go through them --

9 THE ARBITRATOR: Well --

10 MS. CHAITMAN: -- individually. His  
11 wife, she's had a stroke, she's in her 80s,  
12 she talks in a very broken way.

13 THE ARBITRATOR: I've read the papers.  
14 Customarily if people were deposed, since  
15 they're defendants, not plaintiffs, they  
16 typically would be deposed where they live,  
17 although that might be inconvenient for you.

18 But it struck me that some of these,  
19 there probably would be very few questions to  
20 ask. Palmer, who's the son, doesn't admit  
21 the accuracy of Exhibit B, but also  
22 apparently has no firsthand knowledge. I'm  
23 not gainsaying that there may be issues he  
24 could be asked about if only to preclude him  
25 from showing up at trial and saying, suddenly

1 I've remembered something. But maybe with  
2 one or two exceptions, if that, these stuck  
3 me as depositions that would be  
4 extraordinarily short.

5 MR. HUNT: Our experience has been  
6 depositions that we've taken of  
7 Ms. Chaitman's clients -- that they've been  
8 efficient. We've gone to where they live.  
9 We've allowed her to appear remotely via  
10 video link to try to make it more efficient  
11 for them. So, yes, I think you're right.

12 MS. CHAITMAN: But, you know, the bulk  
13 of the depositions -- they follow a certain  
14 format. And I'm not being critical, but the  
15 bulk of the time is, do you recognize this  
16 check, you know, look at the back of the  
17 check, do you recognize the signature.  
18 Because they're proving the deposits and  
19 withdrawals.

20 If they give me that package, I can  
21 sit down with these people and I can review  
22 it. In most instances, we haven't disputed  
23 Exhibit B with these clients. So we can  
24 avoid that. And it's just the trauma to the  
25 clients that I'm trying to avoid.

1                   And if there's a way to do it through  
2                   written questions or just giving me the  
3                   documents and I'll get back to them, that  
4                   would just be so much better than subjecting  
5                   these people to the trauma of this.

6                   THE ARBITRATOR: Well, I agree with  
7                   the trustee that you haven't made the  
8                   hardship showing in the formal way that --  
9                   when I was on the bench, I would require it.  
10                  Mainly a doctor's note saying they're at  
11                  death's door or non compos mentis.

12                  But it does strike me that this is an  
13                  area where something should be worked out  
14                  just because there's probably not much there  
15                  or there for the trustee, although it may  
16                  vary from defendant to defendant.

17                  Gordon and Harwood I guess have no  
18                  personal knowledge of what went on.

19                  MS. CHAITMAN: Palmer, DiGiulian,  
20                  Gordon, Harwood and Pearlman. Because they  
21                  were not involved in the accounts. I mean,  
22                  in Pearlman what happened was there were  
23                  three siblings. And together they've agreed  
24                  to Exhibit B. It's just that they didn't all  
25                  have control in the same period.



1 MR. HUNT: Harwood was directly  
2 involved.

3 THE ARBITRATOR: I'm sorry?

4 MR. HUNT: Harwood was directly  
5 involved, for example.

6 THE ARBITRATOR: Did you give a copy  
7 of this to Ms. Chaitman?

8 MR. HUNT: These are documents that  
9 have already been produced to her.

10 THE ARBITRATOR: I assumed that.

11 MS. CHAITMAN: You will -- if you  
12 depose her, you'll find out that this was  
13 typed up by her husband's secretary, and he  
14 brought it home and she signed it, if she  
15 signed it or if they signed it for her. She  
16 does not have personal knowledge about the  
17 account.

18 THE ARBITRATOR: But --

19 MS. CHAITMAN: We don't dispute these.

20 MR. HUNT: That's what we'll find out  
21 in the deposition; right?

22 MS. CHAITMAN: Yes, but we don't  
23 dispute the deposits --

24 THE ARBITRATOR: Is this something  
25 that can be done through a deposition on

1 written questions or a set of interrogatories  
2 without prejudice to your right to depose the  
3 individual if --

4 MR. HUNT: No, because we've worked  
5 for years with Ms. Chaitman on stipulations,  
6 on requests for admissions and have  
7 repeatedly been stonewalled. And we found  
8 that taking depositions of these people is  
9 the most efficient way to get the information  
10 we need.

11 THE ARBITRATOR: Is there any of these  
12 depositions -- assuming that the people are  
13 compos mentis and not really slow in their  
14 functions, is there any of these depositions  
15 that would take more than two hours?

16 MR. HUNT: Depends on their answers,  
17 of course. I know that the last deposition  
18 that Marie took took longer because  
19 Ms. Chaitman appeared remotely. And so every  
20 time we introduced a document, we had to  
21 identify it to her and read out the Bates  
22 number. And so that took longer. But none  
23 of these depositions have been full  
24 seven-hour depositions.

25 THE ARBITRATOR: Is there any -- any

1 reason why you can't give her the exhibits in  
2 advance?

3 MR. HUNT: We've done that too.

4 MS. CHAITMAN: No, you haven't,  
5 actually. And the thing is, if you'd give me  
6 the exhibits in advance on the deposits and  
7 withdrawals, that takes the bulk of the time  
8 and we could at least save these people that  
9 time.

10 THE ARBITRATOR: Well, I gather you  
11 have it -- not with exhibit numbers, but you  
12 have it.

13 MR. HUNT: We produced -- the last  
14 time we did this where she appeared remotely,  
15 we sent her copies of everything we were  
16 going to use in the deposition.

17 THE ARBITRATOR: With exhibit numbers?

18 MS. CHAITMAN: Dean, it's not correct.

19 THE ARBITRATOR: Let's not go back to  
20 whether it's correct or not. On a  
21 going-forward basis --

22 MR. HUNT: We'd be happy -- in the  
23 deposition I took last week, we provided a  
24 binder with everything numbered with exhibit  
25 numbers ahead of time. Sure.

1 THE ARBITRATOR: That should help, A,  
2 truncate the mechanics of it. Also give you  
3 an opportunity to prep your witnesses.

4 MR. HUNT: The one thing I will say is  
5 we will go to where they are and we'll  
6 accommodate them in any way we can to make it  
7 as --

8 THE ARBITRATOR: Where have you  
9 typically done these? In people's houses or  
10 nearby law offices --

11 MR. HUNT: No, we've done it in nearby  
12 law offices. One guy we did at his house;  
13 another we did at a hotel room.

14 MS. CARLISLE: I did an accountant at  
15 his house, but that -- he was an accountant,  
16 not a defendant. I've had them in hotel  
17 rooms. There was like a local -- I  
18 discovered like a court reporting service had  
19 a suite similar to these where there were  
20 different conference rooms. We did one  
21 there.

22 Have we done more than one?

23 MR. HUNT: I guess this is where they  
24 picked, I guess --

25 MS. CARLISLE: We did do one in

1 Mr. Cohen's office for Placon II. I'm  
2 certainly willing to do it in somebody's home  
3 if that's been offered, but to date we've  
4 only done the one accountant in his  
5 residence, I think. And then one in our  
6 offices in New York. And we have one this  
7 Friday in our offices in Houston for a  
8 gentleman who lives in a separate --

9 THE ARBITRATOR: Who's one of  
10 Ms. Chaitman's clients?

11 MS. CARLISLE: Yes.

12 MR. HUNT: Yes.

13 THE ARBITRATOR: We've had the  
14 discussion today about Exhibit B. For  
15 example, as I read Palmer, it's -- well, no,  
16 Palmer is a bad example. Palmer does not  
17 admit the accuracy of Exhibit B.

18 MS. CHAITMAN: Right.

19 THE ARBITRATOR: But DiGiulian, as we  
20 discussed this morning --

21 MS. CHAITMAN: And Dusek.

22 THE ARBITRATOR: -- does.

23 MS. CHAITMAN: And Dusek does and  
24 Pearlman does.

25 THE ARBITRATOR: Right. And there

1           were lots of affirmative defenses, but some  
2           of those will fall by the wayside by virtue  
3           of the stipulation now.

4                   MS. CHAITMAN: Right. And Gordon  
5           concedes Exhibit B.

6                   THE ARBITRATOR: So hopefully it will  
7           go more smoothly. So one thing I will direct  
8           is that the exhibit binders be produced with  
9           exhibit numbers, or letters, at least three  
10          days before the deposition -- three business  
11          days before the deposition.

12                   MR. HUNT: That's fine.

13                   MS. CARLISLE: With respect to this  
14          Friday's deposition --

15                   THE ARBITRATOR: Absolutely.

16                   MS. CARLISLE: -- with all due  
17          respect. I don't know if I can do that.

18                   THE ARBITRATOR: Of course.

19                   Is that one of these?

20                   MS. CARLISLE: No, sir, it is not,  
21          but --

22                   THE ARBITRATOR: Okay. And there will  
23          be no questioning about issues which have  
24          been conceded, which is the Exhibit B  
25          discussion and the affirmative defenses.

1 MS. CHAITMAN: So then --

2 MR. HUNT: None of these have been  
3 conceded in that way except DiGiulian at this  
4 point.

5 MS. CHAITMAN: No, they all have --  
6 look, if you just -- I mean, Gordon conceded  
7 Exhibit B. Harwood conceded Exhibit B.

8 THE ARBITRATOR: Well --

9 MS. CHAITMAN: Dusek conceded  
10 Exhibit B. So then there shouldn't be any  
11 questioning.

12 THE ARBITRATOR: Dusek is -- I took  
13 random notes, but Dusek -- my note to myself  
14 was "truly unqualified, but lots of  
15 affirmative defenses." So he didn't have the  
16 waffle language on Exhibit B. And some of  
17 those affirmative defenses I presume, by  
18 virtue of the discussion we had today, will  
19 go by the boards.

20 When are these folks currently  
21 scheduled for?

22 MR. HUNT: They are not scheduled.  
23 The date has passed.

24 MS. CHAITMAN: They're not scheduled.

25 THE ARBITRATOR: So why don't you work

1 out amongst yourselves the extent to which  
2 Ms. Chaitman can stipulate, as we indicated  
3 today, with respect to these defendants and  
4 dropping affirmative defenses. Then see  
5 whether there are other issues as to which  
6 you need to depose the individual.

7 Harwood is one of the ones --

8 MS. CHAITMAN: Harwood is in her 80s  
9 and she's conceded Exhibit B.

10 THE ARBITRATOR: So if the purpose is  
11 to -- or a principal purpose is to establish  
12 all of this, it seems to me it becomes  
13 irrelevant if there's that stipulation.

14 MR. HUNT: If Ms. Chaitman is willing  
15 to enter into the exact same stipulation with  
16 respect to everything in Exhibit B for every  
17 one of her clients, I agree. They haven't  
18 done that. They still have all --

19 THE ARBITRATOR: She needs to review  
20 one by one.

21 MS. CHAITMAN: I can't concede all of  
22 my affirmative defenses. I've conceded the  
23 accuracy of Exhibit B with respect to these  
24 clients.

25 THE ARBITRATOR: And that certain



1 affirmative defenses, therefore, are --

2 MS. CHAITMAN: Which go to this issue.

3 THE ARBITRATOR: Right.

4 So then you have to make a  
5 determination on the trustee's side whether,  
6 as to remaining affirmative defenses or any  
7 other issue, there's a reason to depose the  
8 person.

9 MR. HUNT: So just to be clear then,  
10 defendants are entering into the stipulation  
11 that everything in Columns 1 through 5 of  
12 Exhibit B is accurate for Pearlman, Harwood,  
13 Gordon, Palmer and Dusek? They will never  
14 contest anything with respect to a transfer  
15 in this case.

16 THE ARBITRATOR: Well --

17 MS. CHAITMAN: I did -- I don't -- I  
18 don't know what you mean by "never contest"  
19 something with respect to a transfer. I'd  
20 have to look at the language. I'm not going  
21 to concede anything more than of the accuracy  
22 of Exhibit B. And that's the issue. I've  
23 agreed to waive affirmative defenses that go  
24 to the accuracy of Exhibit B.

25 THE ARBITRATOR: Such as Affirmative

1 Defense 20.

2 Well, why don't I say that within one  
3 week, you indicate to counsel, with a copy to  
4 me, which of these defendants you're willing  
5 to make -- enter into that stipulation and  
6 make those concessions regarding the  
7 affirmative defenses.

8 MS. CHAITMAN: Okay.

9 THE ARBITRATOR: And then you can try  
10 and work out the extent to which you wish to  
11 depose the others. We can have a phone  
12 conference call, if need be --

13 MR. HUNT: Okay.

14 THE ARBITRATOR: -- and work it out.

15 MR. HUNT: Can she also provide us,  
16 within that one week, dates for the  
17 depositions if we need them?

18 THE ARBITRATOR: Well, logically it  
19 seems to me first you ought to find out  
20 whether you need the depositions. There's no  
21 point in her getting dates if there's not  
22 going to be a deposition.

23 MR. HUNT: I'd just like to get some  
24 provisional dates because we have got a lot  
25 of moving parts with all these cases to try

1 to fit it in. So if you can provide us dates  
2 within a week, I'd like to get it --

3 MS. CHAITMAN: The problem is that I'm  
4 booked virtually solid with deposition dates  
5 in January and through the first half of  
6 February. So if you want me to block out  
7 dates for witnesses that we may not depose,  
8 it's going to make me unavailable for  
9 witnesses that we are producing. So I  
10 don't --

11 MR. HUNT: I'm not asking you to  
12 provide dates for depositions that have  
13 already been scheduled. I'm asking for  
14 dates --

15 THE ARBITRATOR: She's saying because  
16 of those depositions, the dates you get might  
17 be in March --

18 MS. CHAITMAN: Yes.

19 THE ARBITRATOR: -- for example.

20 MS. CHAITMAN: That's --

21 MR. HUNT: That's why -- so if I wait,  
22 then it's going to be April. So that's --

23 MS. CHAITMAN: I know, but you're only  
24 competing with your own firm. It's not --

25 MR. HUNT: If you can give us dates --

1 MS. CHAITMAN: You're talking about 92  
2 days of deposition.

3 THE ARBITRATOR: You're going to  
4 respond within one week. Why don't we, while  
5 we're here today, set up a phone conference  
6 and then we can discuss this.

7 MR. HUNT: She's going to respond by  
8 the 20th; is that right?

9 THE ARBITRATOR: Right.

10 I can do the 21st or the 22nd. That's  
11 Thursday and Friday.

12 MS. CHAITMAN: The 22nd would be good  
13 for me.

14 MR. HUNT: 22nd is a Thursday. Could  
15 we do like a 3 o'clock call?

16 THE ARBITRATOR: (Nods head in the  
17 affirmative.)

18 MR. HUNT: That will give us a day to  
19 look at what was sent before we have to talk.

20 THE ARBITRATOR: So it's Thursday, the  
21 22nd, at 3 p.m.?

22 MR. HUNT: Yes, sir.

23 THE ARBITRATOR: Works for me.

24 MS. CHAITMAN: That's fine. Thank you  
25 very much.

1 THE ARBITRATOR: Sure. Bear with me  
2 one second. I saw that there was an order, I  
3 don't know whether it's one of your cases, in  
4 Greif, Greif.

5 MR. JACOBS: Greif.

6 THE ARBITRATOR: Is that --

7 MR. JACOBS: An order from --

8 THE ARBITRATOR: Yes, there was one  
9 where you sent it and said, I sent it  
10 prematurely, the order hadn't been entered --

11 MR. HUNT: Oh, yeah, yeah. The order  
12 has been entered now.

13 THE ARBITRATOR: -- and now --

14 MR. HUNT: Yes.

15 THE ARBITRATOR: But I have no  
16 paperwork, so I have no idea what that's  
17 about.

18 MR. HUNT: Okay. Yeah, we need to get  
19 that to you.

20 THE ARBITRATOR: Okay.

21 MR. HUNT: We're off the record now.

22 THE ARBITRATOR: Yes.

23 (The time is 4:50 p.m. The  
24 hearing concluded.)

25

1 C E R T I F I C A T E

2

3 STATE OF NEW YORK )

4 ) ss:

5 COUNTY OF WESTCHESTER )

6

7 I, Eileen Mulvenna, CSR/RMR/CRR and a  
8 notary public within and for the State of New York,  
9 do hereby certify:

10 That I reported the proceedings in the  
11 within-entitled matter, and that the within  
12 transcript is a true record of such proceedings.

13 I further certify that I am not related by  
14 blood or marriage to any of the parties in this  
15 matter and that I am in no way interested in the  
16 outcome of the matter.

17 IN WITNESS WHEREOF, I have hereunto set my  
18 hand this 15th day of December, 2016.

19

20

-----  
Eileen Mulvenna, CSR/RMR/CRR

21

22

23

24

25

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December 15, 2016

### VIA ELECTRONIC MAIL

Honorable Frank Maas  
c/o JAMS, Inc.  
620 Eighth Avenue, 34<sup>th</sup> Floor  
New York, New York 10018

*Re: In re BLMIS (08-01789) – Motion to Compel filed by Chaitman LLP in Picard v. Wilenitz, Adv. Pro. No. 10-04995*

Dear Judge Maas:

We are counsel to the Trustee in the above-referenced adversary proceeding and submit this letter (i) to provide an update on, and further context to, the identification of pre-2002 trading records per your Honor's direction at the December 13, 2016 arbitration; and (ii) in response to defense counsel's December 14, 2016 e-mail attaching the allocution of Frank DiPascali.

### Pre-2002 Trading Records

At the arbitration, your Honor requested that the Trustee provide an update on his ongoing efforts to identify any records reflecting real trading activities at BLMIS prior to 2002. As your Honor is aware, the Trustee has already made available in E-Data Room 1 records obtained from the Depository Trust and Clearing Corporation ("DTCC") reflecting BLMIS trading activities through its "House 5" operations between 2002 and 2008.<sup>1</sup> In addition, we have also separately produced to Ms. Chaitman raw data files that were available from BLMIS's single DTCC account through its DTCC terminal in House 5 at the time of BLMIS's collapse. Records show that BLMIS maintained this single DTCC account from at least the 1970s.

We write to inform your Honor that we have searched for and found additional documents that may be relevant. We will be producing to Defendants an additional 95 records

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<sup>1</sup> Inside BLMIS, the market making and proprietary trading businesses were collectively referred to as "House 5," while the investment advisory business was referred to as "House 17."

December 15, 2016

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related to the DTCC and/or the National Securities Clearing Corporation (“NSCC”), an affiliate of the DTCC, that we believe may reflect trading activity at BLMIS for dates prior to 2002. These documents will be produced to defense counsel by the end of this week. We will further include in that production an additional 18,306 documents that hit on the search terms “Depository Trust,” or “National Securities,” which we ran across the more than 30 million available BLMIS records. Two of the 95 NSCC trading records (Bates Nos. MF00715276 and MF0071586) and 2,264 of the 18,306 additional documents are already in E-Data Room 1 (the NSCC records are in the DTC sub-folder), and the Trustee will promptly upload the balance so that all authorized litigants can access and review them. The Trustee’s efforts to identify additional records related to trading activities at BLMIS prior to 2002 are ongoing, and to the extent such documents are identified, they will be promptly produced to the defendants and uploaded to E-Data Room 1.

In addition, since the June 15, 2016 deposition of Mr. Madoff, where he made self-serving statements that the BLMIS fraud did not begin until 1992, the Trustee sought to identify additional media most likely to contain BLMIS trading records from these earlier time periods. Prior to the Court’s authorization of a second deposition of Madoff focusing on the start date of the fraud, the Trustee objected to the burdens associated with further efforts to identify and restore such documents pursuant to the proportionality considerations of Federal Rule of Civil Procedure 26. Notwithstanding those objections, the Trustee has engaged a vendor to process an additional 167 reels of microfilm that may contain additional BLMIS trading records from 2002 and earlier. Our vendor is processing these reels on a rolling basis, and we will promptly produce to defense counsel and add to E-Data Room 1 any additional BLMIS trading records from 2002 and earlier and/or other documents otherwise responsive to the above search terms as we receive them. To date, 24 of these 167 reels have been processed, resulting in an additional 56,000 documents, but the Trustee has not identified any additional responsive documents utilizing the search terms described above. We anticipate that the processing of the remaining reels will be completed within three to six weeks.

As your Honor is aware, a second deposition of Bernard L. Madoff is scheduled to take place on December 20, 2016. In order to maximize efficiencies and avoid additional depositions, the Trustee is amenable to postponing the deposition until any additional BLMIS trading records from 2002 and earlier that are located on the unprocessed microfilm reels are processed, produced to defense counsel, and added to E-Data Room 1. We believe that this will serve the interests of all parties involved and will minimize the administrative burdens of scheduling multiple depositions with the Department of Corrections. However, if defense counsel prefers to proceed with the Madoff deposition as scheduled, the Trustee will not object.

Finally, in response to your Honor’s inquiry into whether the Trustee possesses an inventory of BLMIS records, the Trustee will produce: (1) a searchable index of hard-copy BLMIS documents (“Hard-Copy Index”); and (2) an index of electronic media obtained from BLMIS (“Media Index”). The Hard-Copy Index is a summary of the hard-copy documents contained in the more than 13,000 boxes of documents that the Trustee inherited from the Lipstick Building and BLMIS’ off-site storage locations.



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Each of the 13,000 boxes of documents reflected in the index were bar coded, and more than 4 million documents were scanned and loaded into the Trustee's review platform. The Hard-Copy Index reflects which boxes were scanned, and if a box was not scanned, it was nevertheless preserved at a warehouse in Queens, New York where BLMIS rented space for several years before its collapse. Given the extraordinary volume and associated expense, it is not possible to scan each and every piece of paper obtained from BLMIS.

These same documents have also been used by the various government agencies that investigated BLMIS. Efforts were made to ensure that, if the government required originals of certain documents, scans of those documents were first made for the Trustee. At several points over the past several years, including as recently as July 2015, the Federal Bureau of Investigation has returned original documents to the Trustee, and the Trustee has updated the Hard-Copy Index when necessary. Though the FBI and the U.S. Attorneys' Office continue to retain certain hard-copy original documents, the Hard-Copy Index is believed to reflect those documents as well.

The Media Index reflects all electronic evidence collected from the Lipstick Building and BLMIS's off-site storage locations. The Trustee identified and restored the active data contained on servers, desktops, laptops, phones, and other media and loaded that data into the Trustee's review database. However, as with the hard-copy documents, it is neither possible nor necessary to restore *all* data from the electronic media, given the associated expenses and the redundancies in the data that has already been processed.

#### **Defense Counsel's E-Mail Regarding Mr. DiPascali's Plea Allocation**

At the arbitration, your Honor requested a copy of Mr. DiPascali's plea allocation. On December 14, 2016, Ms. Chaitman sent your Honor an email attaching a transcript of Frank DiPascali's allocation in purported support for her argument that the Ponzi scheme did not begin until 1992. However, Ms. Chaitman's characterization of Mr. DiPascali's testimony is inaccurate. The testimony is clear that Mr. DiPascali was not offering the start date of the fraud as a factual matter, but instead was recalling when he personally became aware that it was occurring. Needless to say, Mr. DiPascali's awareness of the fraud at a particular time does not mean that the fraud did not occur earlier.

Indeed, this is evident from the face of Ms. Chaitman's email and the portions of the allocation she emphasizes. For example, on page 44, Mr. DiPascali testified that he "helped" to carry out the fraud from the early 1990s through December of 2008, which is hardly the equivalent of asserting that the fraud itself began in the 1990s. Likewise, on page 46, Mr. DiPascali stated that he "knew" that the trading was fake beginning in the 1990s, but again, does not address when the fraud started. Lastly, in specifically identifying "the late 80s or early 90s," Mr. DiPascali responded to a question from the Court concerning when Mr. DiPascali "realize[d]" that the purported trades were fraudulent, not when BLMIS first became fraudulent. Even the fact that Mr. DiPascali states that he possibly became aware of the fraud in the late

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1980s is inconsistent with any assertion that the fraud did not begin until 1992. In sum, a proper reading of Mr. DiPascali's allocution reveals that he did not testify as to the start date of the fraud, but only as to when he became aware of the fraud.

Other plea allocutions by BLMIS employees provide much clearer evidence that the fraud began long before Mr. DiPascali became aware of it. For example, David Kugel, in his plea allocution, testified that he backdated trades at BLMIS beginning in the early 1970s. Specifically, Mr. Kugel testified:

As to Counts One, Three, Four and Five, I provided historical trade information to other BLMIS employees, which was used to create false, profitable trades in the Investment Advisory clients' accounts at BLMIS. Specifically, beginning the early '70s, until the collapse of BLMIS in December 2008, I helped create fake, backdated trades.

I provided historical trade information—sorry—first to Annette Bongiorno, and later to Joanne Crupi, and others which enabled them to create fake trades that, when included on the account statements and trade confirmations of Investment Advisory clients, gave the appearance of profitable trading when in fact no trading had actually occurred. I helped Bongiorno, Crupi and others create these fake, backdated trades based on historical stock prices and were executed only on paper.

(Kugel Plea Allocution, Nov. 21, 2011, 32:1-14.) (emphasis added) Mr. Kugel's plea allocution provides unambiguous evidence that the fraud began, at the latest, in the early 1970s.

We are available to discuss these issues with you further at your convenience.

Respectfully submitted,

/s/ Edward J. Jacobs

Edward J. Jacobs  
Partner

cc: Helen Davis Chaitman, Esq. (Chaitman LLP) (via Electronic Mail)



UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
SECURITIES INVESTOR PROTECTION :  
CORPORATION, Adv. Pro. No.  
: 08-01789 (SMB)  
Plaintiff-Applicant, : SIPA LIQUIDATION  
-against- : (Substantively  
Consolidated)  
BERNARD L. MADOFF INVESTMENT :  
SECURITIES, LLC, :  
Defendant.

-----X  
In Re: :  
BERNARD L. MADOFF, :  
Debtor. :

-----X  
IRVING H. PICARD, Trustee :  
for the Liquidation of Adv. Pro. No.  
Bernard L. Madoff Investment : 10-04995 (SMB)  
Securities, LLC, :  
Plaintiff, :  
-against- :  
TRUST U/ART FOURTH O/W/O :  
ISRAEL WILENITZ, et al., :  
Defendants. :

-----X

TRANSCRIPT of telephone conference as  
taken by and before MONIQUE VOUTHOURIS, Certified  
Court Reporter, RPR, CRR and Notary Public of the  
States of New York and New Jersey, on Thursday,  
January 5, 2017, commencing at 11:00 a.m.

1 B E F O R E:

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23

For a number of defendants

24

25

1 ARBITRATOR MAAS: This is Judge  
2 Maas.

3 MS. CHAITMAN: Hi, Judge, how are  
4 you?

5 ARBITRATOR MAAS: Very well.  
6 Happy New Year.

7 MS. CHAITMAN: You too. You too.

8 MR. HUNT: Good morning, Your  
9 Honor. Dean Hunt, Marie Carlisle and Ted Jacobs  
10 are on for the Trustee, and our court reporter  
11 is also on the line.

12 ARBITRATOR MAAS: Somebody else  
13 just joined us or is that the whole crew?

14 MR. HUNT: That's a new person.

15 ARBITRATOR MAAS: Is there  
16 somebody other than the court reporter,  
17 Ms. Chaitman, and Mr. Hunt, Mr. Jacobs and  
18 Ms. Carlisle on the phone?

19 MS. CHAITMAN: Greg Dexter from my  
20 office is going to be joining us. I don't hear  
21 him yet.

22 ARBITRATOR MAAS: Okay. Do you  
23 want us to wait or --

24 MS. CHAITMAN: No, no, we don't  
25 need to wait.

1 Judge, I don't know how you want  
2 to do this, but I have a couple of points I  
3 would like to make about the orders that were --  
4 that were filed.

5 (Mr. Dexter joins the telephone  
6 conference.)

7 ARBITRATOR MAAS: Hi, Mr. Dexter.

8 MS. CHAITMAN: Greg, are you on?

9 MR. DEXTER: I'm on, Helen. Good  
10 morning.

11 ARBITRATOR MAAS: Good morning.  
12 Is there anybody else who has joined? Okay.

13 Before you do that, let me just  
14 make a couple of points, and I would imagine  
15 that the orders will be the focus of some  
16 attention this morning. I sent them out in  
17 non-PDF form because I wanted to get them out to  
18 you and I was having some trouble dealing with  
19 the filing mechanism, but I think I've now  
20 straightened that out such that I should be able  
21 to get orders once they are drafted into PDF  
22 form and onto the Bankruptcy Court ECF docket in  
23 fairly short order.

24 Also, I know that the Trustee  
25 drafted a proposed order with respect to some of

1 the things we discussed at the December 13th  
2 conference, probably in an effort to goose me  
3 along, possibly because judging from the length  
4 of some of the orders Judge Bernstein signed, I  
5 assume that the Trustee has routinely drafted  
6 orders.

7 It was always my practice on the  
8 bench to draft my own orders. So while I'm  
9 certainly open to having suggestions as to  
10 language, and I'm sure we'll discuss that today,  
11 I prefer to draft my own orders.

12 In drafting the order that relates  
13 to the three defendants, Train Klan, of the  
14 group DiGiulian and Benjamin, and particularly  
15 with regard to the stipulation, and, frankly,  
16 although Ms. Chaitman may disagree, erred on the  
17 side of favoring the defendants such that if  
18 something was not explicitly agreed to on the  
19 record at the conference, I didn't make the  
20 assumption that stipulations that had been  
21 arrived at necessarily applied.

22 So that the net effect of that was  
23 that only Train Klan was included in my order as  
24 an entity or a group of people who had  
25 stipulated to certain facts, although I know

1 Ms. Chaitman disagrees, but at least some of  
2 those facts were stipulated.

3 So, with those preliminary  
4 findings, let me turn to you, Ms. Chaitman.

5 MS. CHAITMAN: Okay. So I  
6 didn't -- the good news is on the Perlman order,  
7 which simply said that by January 3rd I would  
8 advise the Trustee which of the defendants will  
9 stipulate to the accuracy and completeness of  
10 columns 1 through 5, I didn't have any comments  
11 on that.

12 I did, in fact, you know, I  
13 responded to that, you know, in the context of  
14 writing to you, so I laid out exactly what each  
15 defendant is able to stipulate to and what each  
16 defendant is unable to stipulate to.

17 With respect to the order which  
18 begins with the Train Klan caption, if we -- if  
19 we look at paragraph 2 on the general ruling,  
20 you say that, in this paragraph 2, the second  
21 paragraph, in connection with any motion  
22 throughout this trial the defendant, B, concedes  
23 that the funds reflected in column 5 -- oh,  
24 concedes that the funds reflected in column 5 of  
25 Exhibit B were withdrawn from the defendants'

1 BLMIS account and transferred to another account  
2 held by or for the defendants' benefit. Nobody  
3 stipulated to that.

4 That is -- what Exhibit B is is a  
5 schedule of the Trustee's view of deposits and  
6 withdrawals solely with respect to the account  
7 holder. It was not -- it was not a stipulation  
8 as to any subsequent transfers and --

9 ARBITRATOR MAAS: I don't -- let  
10 me interrupt you for a second because I don't  
11 read the language that I used that way. It did  
12 come from the Trustee, and I understand there is  
13 a fair amount of caution on both sides. But I  
14 looked at the transcript again this morning,  
15 bear with me a second, and I'm looking at page  
16 84 of the transcript, and it's not the language  
17 that I used in the order. Let me just see here.

18 I don't have the right -- yeah,  
19 here it is. It's we're talking I believe about  
20 Train Klan, and Mr. Hunt said, "The initial  
21 transfer is the withdrawal. It can be the  
22 withdrawals. So they're saying that they gave  
23 value for the withdrawals."

24 I'm skipping a little language.

25 Ms. Chaitman, "The document

1 related to the withdrawal is the check from  
2 Madoff, which the Trustee has. We're  
3 stipulating that we got those withdrawals."

4 That's, in effect, all I was  
5 trying to say, which is that the account holder  
6 received the funds --

7 MS. CHAITMAN: Well, but it was --

8 ARBITRATOR MAAS: -- and perhaps  
9 correctly, on the transfer to another account --

10 MS. CHAITMAN: Right. See, I  
11 never said that, and I couldn't possibly  
12 stipulate to that. I mean, why don't we just  
13 say and received by the --

14 ARBITRATOR MAAS: By the  
15 defendants?

16 MS. CHAITMAN: -- by the BLMIS  
17 account holder?

18 ARBITRATOR MAAS: I don't have a  
19 problem with that.

20 Mr. Hunt, or anyone else on the  
21 other side?

22 MR. HUNT: That's fine.

23 ARBITRATOR MAAS: Okay. I guess  
24 what I will do is issue an amended or corrected  
25 order.



1 MS. CHAITMAN: Yeah, let's go  
2 through the rest of the issues and maybe we can  
3 clean them up.

4 ARBITRATOR MAAS: Sure.

5 MS. CHAITMAN: In paragraph 6 on  
6 page 4, it says: Within ten days after the  
7 entry of this order, the defendants shall  
8 produce any documents within their possession  
9 that relate to any remaining affirmative  
10 defenses that the defendants assert. Any such  
11 documents that the defendants have failed to  
12 produce within that time frame may not be used  
13 by the defendants for any purpose in connection  
14 with any motion practice, trial or hearing --  
15 hearing or trial, rather.

16 ARBITRATOR MAAS: Right.

17 MS. CHAITMAN: I'm concerned about  
18 that language for this reason. As you may  
19 recall, Judge Maas, the -- Judge Bernstein has  
20 allowed us to depose Mr. Madoff pursuant to a  
21 fairly complicated procedure. And after much  
22 debate, what he held was that fact discovery  
23 would remain open for purposes of the Madoff  
24 deposition and possibly with respect to any  
25 ensuing discovery. In other words, if Madoff --

1 if Madoff's testimony leads for me to depose  
2 someone else, then we would have that discovery.

3 So there is a whole body of third  
4 party discovery, to say nothing of the discovery  
5 that the Trustee has only now begun to produce  
6 in response to your order.

7 ARBITRATOR MAAS: I think that is  
8 dealt with by paragraph 7. All I was trying to  
9 say in 6, and I thought we had discussed this  
10 distinction at the hearing, is if you have it  
11 sitting in a file cabinet today, and it relates  
12 to an un-withdrawn affirmative defense, you have  
13 to produce it.

14 If it's subsequently acquired,  
15 whether it's from the Trustee or from DTC or  
16 wherever, it falls within paragraph 7.

17 MS. CHAITMAN: Within paragraph 6.  
18 If we could just clarify that. I'm just  
19 concerned, Judge, because if you read this, I  
20 just don't want to be in a position where three  
21 years from now I'm trying to reconstruct what  
22 happened. You know --

23 ARBITRATOR MAAS: Well, I'm still  
24 missing what the problem is. If Mr. Madoff is  
25 deposed let's say a third time, and he says, oh,

1 yes, I forgot to tell you in addition to the  
2 documents in the Lipstick Building, I had an  
3 office in Switzerland where I kept documents,  
4 and then somehow those documents are retrieved,  
5 paragraph 6 doesn't preclude you from using  
6 those documents.

7 Paragraph 7 says once you get  
8 them, you have to make them available to the  
9 other side within ten days.

10 So I just don't see the issue,  
11 particularly as clarified by the discussion  
12 we're having right now.

13 MS. CHAITMAN: Here is my concern,  
14 and maybe I'm being overly cautious, at the  
15 present time we've produced the documents that  
16 we believe relate to the affirmative defenses.

17 However, there is a whole body of  
18 information that we're just now beginning to  
19 explore, which is the documents relating to  
20 transactions which occurred prior to 1992.

21 Now, it may be that there is a  
22 document that we have which will relate to an  
23 issue I have not yet identified. So I wouldn't  
24 have produced it because I didn't realize it was  
25 relevant, but it may become relevant.

1 ARBITRATOR MAAS: Am I going to  
2 hear from Trustee's counsel on this?

3 MR. HUNT: I disagree with  
4 everything she said. I think the order is clear  
5 on its face and doesn't need to be changed.

6 MR. JACOBS: And also I would add  
7 to that, Your Honor -- this is Edward Jacobs --  
8 in addition to that, any type of -- I can't  
9 conceptualize any type of document that may fall  
10 under that category that Ms. Chaitman just  
11 enumerated that wouldn't already be requested  
12 and relevant to the case pursuant to our  
13 discovery requests.

14 So if any such documents relating  
15 to the defendants' BLMIS activities or  
16 investments are in their possession, they need  
17 to be produced.

18 MR. HUNT: I agree with that. I  
19 agree with that.

20 ARBITRATOR MAAS: Well, I  
21 recognize the theoretical possibility.

22 I would imagine for your 92  
23 clients, Ms. Chaitman, that each of them has a  
24 relatively small group of documents that they  
25 have relating to Madoff. At best, they have the

1 monthly statements, maybe some deposit and  
2 withdrawal records, but we're not talking about  
3 millions of documents per individual or even  
4 probably thousands of documents per individual.

5 So I'm going to adhere to  
6 paragraphs 6 or 7, notwithstanding which if you  
7 end up in the sort of circumstance that you just  
8 described, you can always make an application to  
9 Judge Bernstein, or if I'm still involved at  
10 that stage, to me. But I think we're dealing  
11 with something totally theoretical.

12 MS. CHAITMAN: Okay. If you can  
13 move now to page 5, paragraph 2 with respect to  
14 DiGiulian --

15 MR. HUNT: Can I just make one  
16 comment before we get to page 5 on page 4, Your  
17 Honor?

18 ARBITRATOR MAAS: Sure.

19 MR. HUNT: The only comment that  
20 we have on the order is in paragraph B5, the  
21 cross-reference to paragraph A1 I believe should  
22 be A2.

23 ARBITRATOR MAAS: Hang on. I  
24 think it's just a typo. You're absolutely  
25 correct.

1 MR. HUNT: And with respect to  
2 that paragraph, we agreed that Train Klan agreed  
3 to the stipulation set forth in paragraph A2,  
4 but in Ms. Chaitman's December 29th letter she  
5 indicated that they could not agree to  
6 paragraphs 1 through 3 because the Trustee had  
7 manipulated facts concerning the date of the  
8 deposits and withdrawals, and I just want to  
9 confirm that, in fact, Train Klan stands by its  
10 stipulation with respect to columns 1 through 5.

11 MS. CHAITMAN: Well, again, this  
12 only goes to the dates, because we have evidence  
13 where the Trustee has interpreted dates in a way  
14 which is, in my opinion, inconsistent with the  
15 law, so that's a narrow exception to the general  
16 stipulation. And, you know, the facts are the  
17 facts. I'm not going to waive a defense --

18 MR. HUNT: I guess the question  
19 for the Court or for Your Honor is I just want  
20 to confirm that with respect to Train Klan the  
21 stipulation is accurately reflected in paragraph  
22 A2.

23 ARBITRATOR MAAS: Well, in effect,  
24 as to Train Klan, as opposed to the other two  
25 defendants we were talking about as part of that

1 package motion, I've rejected what Ms. Chaitman  
2 was asserting, so I'm holding Train Klan to the  
3 stipulation in paragraph A2, which my reading of  
4 the transcript is that Ms. Chaitman agreed to  
5 that. I'm not letting her back out of it.

6 As to the other two defendants, I  
7 thought the transcript was more equivocal. So,  
8 as you saw in the order, I haven't held them to  
9 that.

10 MR. HUNT: Thank you, Your Honor,  
11 for that clarification.

12 MS. CHAITMAN: Okay, Judge --

13 ARBITRATOR MAAS: We're on page 5,  
14 Ms. Chaitman?

15 MS. CHAITMAN: Yes, page 5,  
16 paragraph C1, what you had said at the hearing  
17 that we had was that the defendants would  
18 produce the first two pages of the tax return  
19 and then the schedule that related to the Madoff  
20 income.

21 The order, however, is not so  
22 limited. In other words, the way I read the  
23 order is if they invested, you know, through  
24 Bear Stearns or Goldman Sachs, and they had  
25 Schedules B and D relating, or D and E relating

1 to any of those, they would have to produce  
2 those as well, and I don't know whether that was  
3 your intent.

4 If it was, I would certainly --  
5 ARBITRATOR MAAS: I'm limiting the  
6 amount of material that needs to be produced.  
7 There is a confidentiality order, and I think  
8 that the Trustee and the Trustee's experts are  
9 entitled to enough documentation so they can  
10 make heads and tails out of what it is that is  
11 being alleged with respect to capital gains  
12 taxes.

13 MS. CHAITMAN: So you're saying --  
14 you're including in this capital gains from  
15 other investments?

16 ARBITRATOR MAAS: Well, I'm not  
17 allowing, as we discussed at the hearing,  
18 redactions on relevance grounds, so --

19 MS. CHAITMAN: Or on privacy, or  
20 on privacy. I mean --

21 ARBITRATOR MAAS: Yeah.

22 MS. CHAITMAN: -- you're basically  
23 giving -- you're basically giving them the  
24 ability, then, to determine what assets they  
25 could levy on, that's -- that's my objection.



1 ARBITRATOR MAAS: No, I don't  
2 think that's the case at all, because there is  
3 lots of assets that won't be reflected, A. B,  
4 the capital gains that are going to be shown,  
5 first of all, relate to a period many years  
6 before the Trustee will ever get to the stage of  
7 trying to go after assets.

8 A lot of these schedules will show  
9 purported sales. They are not going to show  
10 purchases. So they are not going to give the  
11 Trustee a picture, certainly not an accurate  
12 picture, of what assets a particular individual  
13 or account holder has.

14 Also, you know, given the fact  
15 that the sixteenth affirmative defense is in  
16 there, that that's what generates their  
17 entitlement to have these records. But for the  
18 sixteenth affirmative defense, I would agree  
19 with you it's none of the Trustee's business.  
20 But having raised that defense, I don't think  
21 you can then draw too fine a line as to what  
22 they get.

23 MS. CHAITMAN: Okay. If we can  
24 now move to the third order, which involves the  
25 Wilenitz issues --

1 ARBITRATOR MAAS: Sure. Hang on  
2 just a second. Let me get to that one. Yes.

3 MS. CHAITMAN: I have a whole  
4 bunch of questions on this one.

5 On paragraph 4 you wrote by  
6 December 20th the Trustee shall indicate how  
7 long it will take to make a good faith  
8 determination as to whether there are any  
9 trading records for the years prior to 1992.

10 Mr. Jacobs sent you a letter --

11 ARBITRATOR MAAS: Right.

12 MS. CHAITMAN: -- and he did  
13 produce some records, but it's not -- there  
14 hasn't been a representation that it's complete  
15 by any means. So --

16 ARBITRATOR MAAS: And as I recall,  
17 they were restoring numerous microphone records  
18 in an effort to determine whether there is  
19 anything else, and perhaps were doing other  
20 things, and also were giving you an index as to  
21 what files exist.

22 I can't very well require them to  
23 go through every box that existed in the  
24 storeroom. So people have to make educated  
25 guesses.

1 I don't disagree with you that  
2 there was some waffling about how long it will  
3 take. But under the circumstances I think the  
4 Trustee has probably done as best as he could do  
5 at this point.

6 As we move forward and as time  
7 goes on, if you're not getting materials and you  
8 think there are materials, or you think their  
9 search has not been sufficiently robust, we can  
10 discuss that.

11 MS. CHAITMAN: Well, the -- I  
12 think what I would want is a representation that  
13 what has been made available to us is everything  
14 that was made available to Dubinsky, their  
15 expert upon which they are relying. And I  
16 anticipate that Trustee's counsel will say that  
17 that should be reserved for expert discovery,  
18 but it can't be because these are core documents  
19 that we need and we may need to take third party  
20 discovery with respect to this.

21 So, you know, Dubinsky had access  
22 to a massive amount of trading records from the  
23 1970s and 1980s, and what Mr. Jacobs has  
24 produced to date is only a very, very small  
25 percentage of that.

1 ARBITRATOR MAAS: That's a fair  
2 question.

3 Mr. Jacobs?

4 MR. JACOBS: Hi, Judge Maas. I  
5 can most certainly address that. There isn't  
6 anything that Mr. -- in terms of Ms. Chaitman's  
7 specific inquiry regarding trading records,  
8 there aren't any records that Mr. Dubinsky had  
9 access to at any point in time that Ms. Chaitman  
10 also doesn't have access to both historically  
11 and contemporaneously with anything new that  
12 we're finding.

13 So what we've done, as I explained  
14 in my letter from December, is those 93  
15 additional reports that we found and are 95  
16 total from the '80s, two already were in the  
17 data room, have been now put in the data room,  
18 and they also have been provided simultaneously  
19 to Mr. Dubinsky at the same time Ms. Chaitman  
20 got them.

21 With respect to any additional  
22 types of reports from those earlier time periods  
23 that we can find from our microfilm restoration  
24 project, those will also, as quickly as humanly  
25 possible, be put in the data room in the folder

1 that I specified in the letter. Ms. Chaitman  
2 has access to that. She will have access to  
3 those documents at the same time Mr. Dubinsky or  
4 anyone else has access to them. There is  
5 nothing -- sorry --

6 ARBITRATOR MAAS: Is there a  
7 procedure by which Ms. Chaitman will know that  
8 documents have been added?

9 MR. JACOBS: Yes. But as I  
10 explained in my December letter, we intend to  
11 both add those to the data room and produce them  
12 on either a hard drive or disk simultaneously to  
13 Ms. Chaitman. So she'll get a production letter  
14 notifying her with the media she can load into  
15 her own review platform, and also an update that  
16 those documents have also been added to the data  
17 room, so she can access them that way as well.

18 We are working on the restoration  
19 of that microfilm as fast as humanly possible.  
20 I believe I said in my December letter we  
21 anticipated about four to six additional weeks.  
22 I think we're still looking at about that time  
23 frame.

24 The reason why, unfortunately, I  
25 cannot commit to a date certain is that, as you

1 can imagine, there are -- there is a whole host  
2 of technological issues in connection with this  
3 restoration over which I have absolutely no  
4 control.

5                   So I can let you know that we will  
6 be sending an additional update letter to Your  
7 Honor and to Ms. Chaitman hopefully within the  
8 next seven business days or so with I think what  
9 will be an additional production of several  
10 additional reports we have since had restored  
11 from microfilm since the date of my last letter.

12                   The reason why I'm not able to  
13 provide those today is because there are all  
14 kinds of technological issues with the data  
15 that's being restored from the microfilm. We  
16 get the raw data restored, but then it has to  
17 be -- we have to review it and we have to  
18 unitize it. We have to make determinations as  
19 to where documents start and where they end. We  
20 have to make sure that it's complete. We have  
21 to quality control check it. We have to make  
22 sure that dates or pages aren't skipped. It's a  
23 tedious, time-intensive project that's done by  
24 our vendor for the most part, subject to our  
25 quality control, and, unfortunately, it just

1 takes time.

2 So we will continue to work  
3 through that restoration as quickly as humanly  
4 possible. And as soon as we are able to  
5 conclusively identify anything that Ms. Chaitman  
6 has indicated she's interested in, we will  
7 produce it to her and add it to the data room.

8 And for the sake of all  
9 transparency, so there is no doubt, we will  
10 continue to provide Your Honor with -- we will  
11 continue to copy Your Honor on those update  
12 letters until we're done.

13 ARBITRATOR MAAS: The only thing  
14 that you said that I didn't understand is when  
15 you said the material has to be unitized, I'm  
16 not sure what you mean.

17 MR. JACOBS: Yeah. Sorry.  
18 That's -- so, for ESI, electronically-stored  
19 information, the metadata of documents that are  
20 created, sent, received and modified over time,  
21 the metadata associated with those documents  
22 tells you specifically where the documents start  
23 and where it ends, if it's multiple pages,  
24 right.

25 For microfilm, that data the way

1 it's restored, it's coming back to us, we don't  
2 have the benefit of that -- of that metadata  
3 because it's microfilm that's being restored,  
4 and by whatever technological process, it  
5 doesn't -- we don't receive the benefit of that.  
6 So we have to do that -- we have to review all  
7 of the data manually and code it for the start  
8 and end marker for each individual document and  
9 usually that we can tell because they are all --  
10 like a report had a date, for example. So  
11 that's the unitization issue that I was  
12 referring to.

13 ARBITRATOR MAAS: I assumed that's  
14 what it was. I just wanted to make certain.

15 MR. JACOBS: Yeah. So we have --  
16 we did receive additional reels of microfilm  
17 restored since I wrote my letter in December.  
18 And I believe, through just preliminary  
19 searches, that it does contain some additional  
20 NSC reports of stock trading conducted by House  
21 5 prior to 1992. And the reason why it hasn't  
22 been produced yet is because by searching it,  
23 when I do a search to try to extract that  
24 material that's relevant, I'm getting back --  
25 I'm getting -- the search results aren't



1 yielding full reports because the documents  
2 haven't been unitized and they haven't been  
3 coded yet and put into a format that can be --  
4 that where we can make sure that the data is all  
5 complete and accurate for production. So that's  
6 what's happening now. As soon as that is  
7 complete, it will be produced.

8 ARBITRATOR MAAS: Ms. Chaitman.

9 MS. CHAITMAN: I would just like  
10 something clarified, Ted --

11 MR. JACOBS: Sure.

12 MS. CHAITMAN: -- are you saying  
13 that these are documents that Dubinsky has never  
14 reviewed or these are the documents that he did  
15 review?

16 MR. JACOBS: This is microfilm  
17 that has never been restored. The reels that  
18 are out, that we sent out to our vendor that I  
19 mentioned, I believe there are a little more  
20 than a hundred, I just need to check my notes  
21 and my letter, that's -- that's data that has  
22 never been restored. So nobody has seen this  
23 material until we see it and produce it -- until  
24 we get it and produce it.

25 ARBITRATOR MAAS: Including, in

1 particular, Mr. Dubinsky.

2 MR. JACOBS: That's correct.

3 Now, the original production of  
4 the 95 records, we didn't -- did come from -- I  
5 believe they did come from microfilm, but  
6 microfilm that had already been restored some  
7 time ago, and that was in a database.  
8 Mr. Dubinsky had seen two of those reports and,  
9 in fact, they are referenced -- they are on his  
10 documents considered list. That's why they were  
11 in the data room and they have been in the data  
12 room for some number of years.

13 The additional 93 that we produced  
14 were not on Mr. Dubinsky's considered list, but  
15 they were existing in our database and we found  
16 those by search terms, as I mentioned in my  
17 letter, and those I don't believe Mr. Dubinsky  
18 has ever seen, but they now have been added to  
19 the data room and he has them now --

20 MS. CHAITMAN: So is it -- excuse  
21 me, but is it correct to say that if Dubinsky  
22 had reviewed any trading records, they would  
23 have been included in the data room before we  
24 added these new things?

25 MR. JACOBS: Anything that

1 Mr. Dubinsky considered in connection with his  
2 report is in the data room, and the only  
3 exception to that are certain structured data  
4 that we disclosed in the data room manual that  
5 isn't amenable to inclusion in the data room,  
6 and we can make that available by other means.

7 But any -- all of the documents  
8 that Mr. Dubinsky considered with his report as  
9 it exists today are in the data room. So if  
10 you -- if you're familiar with his report as  
11 we've produced it, you'll know that he  
12 references a lot of documents that he relies  
13 upon by Bates number throughout his report, and  
14 then there are voluminous appendices at the end  
15 of his report that I believe are, in some  
16 instances, hundreds of pages long that list by  
17 Bates number tens of thousands of additional  
18 documents he considered. Every single one of  
19 those, to the extent technologically feasible,  
20 has been put in the data room.

21 ARBITRATOR MAAS: Anything else on  
22 that, Ms. Chaitman?

23 MS. CHAITMAN: So, okay, but when  
24 you say technologically feasible, so you mean  
25 that excluded the documents that you're now

1 putting into the data room? Is that -- I just  
2 want to understand what we're dealing with.

3 MR. JACOBS: Okay. No, I'm happy  
4 to explain it, and it's a little confusing. I  
5 apologize if I'm not being clear.

6 So the micro -- the 100 plus reels  
7 of microfilm that I mentioned in my December  
8 letter that we've sent out for processing, none  
9 of that data, none of that microfilm has ever  
10 been processed before. So none of that material  
11 that we'll be producing starting now going  
12 forward, to the extent it's relevant, is in the  
13 data room or has ever been viewed by us or  
14 Mr. Dubinsky or any litigant or anyone else in  
15 connection with our adversary proceedings.

16 Mr. Dubinsky will be getting that,  
17 if we make it available to him, at the same time  
18 we produce it to you.

19 With respect to the 95 reports  
20 that were the subject of -- that we produced in  
21 connection with that December letter, two of  
22 those have been considered by Mr. Dubinsky and  
23 provided to him. They are identified in the  
24 appendix of his documents considered. They were  
25 in the data room and have been for a number of

1 years.

2                   The additional 93 that we produced  
3 were in the database of microfilm we had  
4 previously restored, but they, to my knowledge,  
5 have not been considered by Mr. Dubinsky in  
6 connection with his report.

7                   ARBITRATOR MAAS: And just so the  
8 record is clear, Mr. Jacobs, your letter talks  
9 about having engaged the vendor, the process and  
10 the additional 167 reels, that data is the  
11 number you're talking about?

12                  MR. JACOBS: Correct. So those  
13 167 reels have not been previously processed.  
14 So Mr. Dubinsky doesn't have those documents. I  
15 don't have those documents until they are  
16 processed. And if there is any relevant  
17 material reflecting securities trading at BLMIS  
18 from any point in time, we will add it to the  
19 data room and we will produce it and send the  
20 specific production letter to Ms. Chaitman  
21 identifying those records that will be produced.

22                  MS. CHAITMAN: When you say  
23 relevant, what is -- what is the screen there?  
24 What would you not be putting on in the data  
25 room?

1 MR. JACOBS: We are -- we are  
2 right now using the search terms that I  
3 disclosed in my letter in December to identify  
4 any records or reports that reflect securities  
5 trades having been conducted historically at  
6 BLMIS for any point in time.

7 MS. CHAITMAN: Okay. So when you  
8 say relevant, I mean, you're not saying we're  
9 not putting -- we're not putting in any evidence  
10 of these trades, you're not distinguishing among  
11 trades, right? I mean, you're putting all the  
12 trading records in.

13 MR. JACOBS: That's correct, yeah.  
14 If it's a trading record, if it's a BLMIS  
15 trading record of securities having been traded,  
16 we will produce it.

17 MS. CHAITMAN: Okay. Okay. So,  
18 you know, on that I guess the only concern I  
19 have, and I'm not sure that it's something that,  
20 Judge, you ought to consider right now, but we  
21 have scheduling orders in every case for fact  
22 discovery. And, obviously, this is -- this is a  
23 major new area of discovery which we will need  
24 time to analyze, and the present fact discovery  
25 orders do not -- did not contemplate this whole

1 new body of discovery.

2 ARBITRATOR MAAS: Well then we'll  
3 have something -- well, let me not interject  
4 before the Trustee responds.

5 MR. JACOBS: Well, Helen, as you  
6 know, we currently have been automatically  
7 extending all such deadlines in all cases  
8 pending, you know, specifically the Madoff  
9 deposition pursuant to Judge Bernstein's  
10 direction. And we, you know, we will continue  
11 to work with you on a case-by-case basis to  
12 contemplate an extension in any case that's  
13 needed.

14 But I just want to be clear for  
15 Judge Maas' benefit that this is not a whole new  
16 body of discovery. These are the exact same  
17 type of House 5 trading reports that BLMIS --  
18 for trades that BLMIS' market making business  
19 were conducting, that, to our knowledge, have  
20 nothing to do with House 17 or any of the  
21 investment advisory customers at any point in  
22 time.

23 And, Judge Maas, I also would just  
24 like to make clear that Ms. Chaitman has had for  
25 years now all of those records for 2002 to 2008

1 and has not been able to point to any -- any  
2 example of an actual securities trade having  
3 been conducted for an IA customer. And I -- we  
4 don't believe that, no matter what is contained  
5 on this microfilm, any additional securities  
6 trading reports from any additional point in  
7 time is going to change that.

8 So this isn't a whole new area of  
9 discovery that's being opened up here. This is  
10 an argument that Ms. Chaitman has been making  
11 for quite some time that she has been quite  
12 unsuccessful in demonstrating, so --

13 ARBITRATOR MAAS: I understand, I  
14 understand the debate. We could continue to  
15 debate it, but I think Ms. Chaitman needs to  
16 look at what you produce and we'll worry about  
17 discovery deadlines or reopening discovery  
18 deadlines, when I say "we," either Judge  
19 Bernstein or me depending on the case, as we  
20 move forward --

21 MR. JACOBS: Absolutely.

22 ARBITRATOR MAAS: -- speculate.

23 MR. JACOBS: Yeah, and we will  
24 work with Ms. Chaitman to do that.

25 And also, you know, we've also had



1 conversations with Judge Bernstein about this,  
2 and I think that the parties have been wanting  
3 the benefit of the conclusion of Mr. Madoff's  
4 testimony, and there is going to be a second  
5 date scheduled is my understanding, I believe,  
6 Helen, tell me if I'm wrong, but we're aiming  
7 for some point in February. And I think the  
8 parties will be before Judge Bernstein after  
9 that to discuss whether there should be or will  
10 be any additional third party discovery to  
11 follow up on any testimony that Mr. Madoff  
12 provides. And, you know, certainly we will be  
13 happy to extend case management orders until the  
14 completion of that at a minimum.

15 So I don't think that we're at a  
16 point right now where we have any disagreement  
17 over that.

18 ARBITRATOR MAAS: I just have a  
19 question. Is it a second day of Madoff or a  
20 third day?

21 MS. CHAITMAN: Let me explain,  
22 Your Honor, the -- what Judge Bernstein did was  
23 he set up what are called day one topics, there  
24 is a whole list of topics that are permitted  
25 subjects for questioning Mr. Madoff on the first

1 day.

2 After seven or eight hours,  
3 Mr. Sheehan, on behalf of the Trustee, and I  
4 agreed that I had not completed my examination  
5 of Mr. Madoff with respect to the day one  
6 topics, so -- of course, he didn't have any  
7 opportunity to cross. So we're continuing -- I  
8 think Mr. Sheehan said he was going to write a  
9 letter to Judge Bernstein explaining -- I  
10 haven't seen the letter yet -- but we are going  
11 to continue Mr. Madoff's deposition in February  
12 with respect to the day one topics.

13 The procedure that the judge set  
14 in place is that after we complete the day one  
15 topics, we would go back to him and talk about  
16 what future questioning we would like to have of  
17 Mr. Madoff.

18 But, realistically, the day one  
19 topics are very, very broad and I don't -- I  
20 don't even think we're going to finish them in  
21 another day. But I think that Mr. Sheehan will  
22 have, I'm sure, a full day of cross, and I have  
23 another full day of -- of questions. So we just  
24 have to play it by ear as we go.

25 ARBITRATOR MAAS: And the only

1 reason I asked is I was under the impression  
2 that that second day on the day one topics had  
3 been scheduled and would have occurred by now.

4 MR. JACOBS: No, Your Honor. I'm  
5 not sure we agree with the time periods that  
6 Ms. Chaitman set forth. But I think we do agree  
7 that there will be, at a minimum, another day of  
8 testimony, and we do have a right to cross and  
9 we haven't yet had that opportunity. But it has  
10 not been -- it has not yet currently been  
11 scheduled.

12 ARBITRATOR MAAS: Okay. What's  
13 next, Ms. Chaitman?

14 MS. CHAITMAN: Okay. So in  
15 paragraph 5 it says the Trustee shall respond to  
16 request numbers 2 and 3 solely with respect to  
17 errors in the account statements, the records of  
18 clients of Chaitman of which the Trustee  
19 presently is aware and which have not been  
20 previously disclosed to that firm.

21 There is no deadline for that and  
22 I just wanted to have a time frame.

23 MR. JACOBS: I can, hopefully,  
24 solve that problem. We are preparing amended  
25 responses to that request right now which I hope

1 to have served within a week, probably sooner.

2 But we will -- we will amend our answers to  
3 those requests consistent with the judge's  
4 order, and if a week's time is acceptable to  
5 you, Helen, we'll have it to you by then.

6 MS. CHAITMAN: Yeah, that's  
7 perfect. That's perfect. Okay.

8 So now on paragraph number 6,  
9 which is request number 4, it says, "This  
10 request concerns profit withdrawal transactions  
11 for which there is no proof that the customer  
12 initiated the request. Insofar as clients of  
13 Chaitman are concerned, the information either  
14 has been produced or will be produced at the  
15 expert discovery stage."

16 The problem with that, Judge, is  
17 this. If we don't get core discovery until the  
18 expert discovery stage, it doesn't give us the  
19 ability to take any other discovery we may need,  
20 because in the expert discovery stage we're  
21 limited in what we can do.

22 So it seems to me that this is  
23 such a fundamental issue. And just to put it in  
24 context, Judge, I just want to explain this to  
25 you, I'm sure you understand it, but, you know,

1 Mr. Jacobs just said that we haven't pointed to  
2 one situation since 2002 where BLMIS indicated a  
3 trade for the investment advisory customers and  
4 it actually made that trade.

5 We don't contend that securities  
6 were purchased for the IA customers from 2002  
7 on. In fact, Mr. Madoff has said that beginning  
8 at some point in 1992, he stopped buying -- he  
9 started a new trading strategy and in that  
10 strategy he never bought the securities that  
11 were shown on the statements --

12 MR. JACOBS: Well, actually,  
13 Helen, he's now revised that to 1987, but, you  
14 know, we can fight about that later.

15 MS. CHAITMAN: Well, I'm not --  
16 I'm not aware of where he said that. In his  
17 deposition he said 1992, but --

18 MR. JACOBS: And he said 1987 the  
19 second time.

20 MS. CHAITMAN: Okay. I'm not  
21 going to argue with you --

22 ARBITRATOR MAAS: Wait, let me  
23 interrupt for a second because, Mr. Jacobs, you  
24 just talked about the second time, and that's  
25 what I was trying to understand. I read one day

1 of the deposition. He was deposed for a second  
2 day?

3 MR. JACOBS: Well, the first -- by  
4 the first time I meant Ms. Chaitman's deposition  
5 that she took in connection with the profit  
6 withdrawal proceeding, which was some months  
7 ago, and then I guess his second deposition was  
8 the first day that happened last month to which  
9 we're now -- to which there will be a  
10 continuation to be scheduled.

11 ARBITRATOR MAAS: Okay. And the  
12 Madoff deposition that I read was the first of  
13 those. Correct?

14 MR. JACOBS: Correct, yes, yes.

15 ARBITRATOR MAAS: All right. Does  
16 it make sense for me to read the other  
17 transcript? I didn't want to run the meter if  
18 it's irrelevant to what I'm going to be doing --

19 MR. JACOBS: Well, our view, Your  
20 Honor, is that it's irrelevant to the discovery  
21 disputes that are pending in these -- in these  
22 current applications. I mean, Ms. Chaitman has  
23 made it an issue in connection with the stock  
24 trading reports, but that was never properly  
25 before Your Honor. So I really don't see it has

1 any relevance to the work that we're doing now.

2 ARBITRATOR MAAS: Okay. That's  
3 fine.

4 MS. CHAITMAN: Well, Your Honor,  
5 if I can just finish where I started before, I  
6 think it's important for you to understand, and  
7 I would strongly disagree with Ted's position  
8 that it's not relevant, the vast majority of my  
9 clients were customers of Madoff in the 1980s  
10 and 19 -- and into 1992.

11 In calculating their clawback  
12 exposure, the Trustee has taken the position  
13 that they are not entitled to any appreciation  
14 on their investment from, say, 1980 on.

15 What Mr. Madoff's testimony very  
16 emphatically was is that there was no fraud of  
17 the investment advisory customers prior to the  
18 split-strike conversion, which began in 1992.

19 What that means is that for a lot  
20 of my clients the cases will have to be  
21 dismissed, because if, in fact, the Court finds  
22 that there was no fraud of the investment  
23 advisory customers prior to 1992, then they have  
24 to be credited with their account balances as  
25 of, let's say, 12/31/91. And if you do that, in

1 many cases the clawback exposure will be  
2 eliminated completely.

3 So this is a very important  
4 factual issue for a great many of my clients and  
5 that's why we're focusing on it.

6 So, you know, I would say that you  
7 should read Mr. Madoff's deposition. I think  
8 that Ted has misunderstood what he said, and I  
9 think that you should read it yourself, because  
10 the testimony very clearly was that he purchased  
11 securities for every investment advisory  
12 customer prior to the split-strike conversion  
13 strategy, which started sometime in 1992.

14 MR. JACOBS: Your Honor, if you  
15 would like a copy of the transcript, I'm happy  
16 to provide it.

17 I just -- you know, obviously the  
18 parties agree that the start date of the fraud  
19 is a disputed issue. And I can tell you that  
20 beyond Mr. Madoff's very self-serving testimony,  
21 there is absolutely no evidence that he was ever  
22 running a legitimate business for his IA  
23 customers. And even if we were to credit all of  
24 the customers' accounts through 1992, the impact  
25 on our claims would only be affected in a very



1 small number of Ms. Chaitman's cases. So it's  
2 really not this make or break issue that she  
3 makes it out to be. And even if she prevails,  
4 it's not going to significantly affect the  
5 majority of our claims, so --

6 ARBITRATOR MAAS: Why don't you  
7 send it to me and I'll skim it.

8 MR. JACOBS: Okay.

9 MS. CHAITMAN: Okay. So --

10 ARBITRATOR MAAS: But he  
11 interrupted you, you were on discovery request 4.

12 MS. CHAITMAN: Exactly. So  
13 basically what I'm asking, Judge, is that if  
14 there are documents responsive to this request,  
15 that we get them during the fact discovery  
16 period, and, most importantly, while I have  
17 access to Mr. Madoff. Because if I don't get  
18 this until the expert discovery stage, then I  
19 can't go back to Mr. Madoff and ask him about it.

20 MR. JACOBS: Your Honor, I think I  
21 can address Ms. Chaitman's concern.

22 Helen, are you talking about --  
23 are we back to the PW-related specific  
24 documents --

25 MS. CHAITMAN: Yes.

1 MR. JACOBS: -- that you're  
2 concerned about?

3 So I'm not aware of any -- okay.  
4 So as part of our initial disclosure or  
5 production, which we make before you even served  
6 us with a request in fact discovery, we include  
7 all of the underlying documentations that our  
8 experts will likely review and rely upon in  
9 connection with their report, including on PW  
10 specific issues.

11 So there is nothing that I believe  
12 that's going to appear for the first time in  
13 connection with the report that you won't  
14 already have as part of that initial disclosure  
15 production. So you do have everything in every  
16 single case regarding those PW transactions in  
17 fact discovery. We're not -- we're not  
18 withholding any of that material until expert  
19 discovery in connection with the disclosure of  
20 our report.

21 MS. CHAITMAN: So then you  
22 wouldn't object to this paragraph being revised  
23 to reflect what you just said?

24 MR. JACOBS: I don't think --  
25 well, let me look at the paragraph.

1 Well, it depends upon -- I agree  
2 with the paragraph as constructed, because our  
3 objection to your original request was that it  
4 wasn't limited to defendant-specific materials.

5 So your request as drafted was  
6 overly broad and burdensome, which was our  
7 objection to it, and for that reason I would  
8 object to a revision of this paragraph that  
9 would -- that would confer upon the Trustee any  
10 production obligation beyond documents relevant  
11 to the defendants in the case.

12 Moreover, I also -- you know, it  
13 might be that -- it might be that because we're  
14 talking theoretically about documents and you're  
15 not raising, you know, I want to see the  
16 customer statements or I want to see the bank  
17 transfer documents, we're not talking about a  
18 specific category of document, I'm concerned  
19 that there may be -- you might have in your mind  
20 the type of document that doesn't get, you know,  
21 disclosed until the expert identifies it in  
22 their report that I'm not thinking of right now,  
23 in which case -- just because I can't foresee it  
24 or I'm not anticipating it.

25 So if that happens, then it's

1 perfectly legitimate for us to disclose it in  
2 expert discovery and you can serve a request for  
3 it and we'll produce it and there is no  
4 prejudice to you. So I don't believe that any  
5 revision of this paragraph is necessary.

6 But what I am telling you is that  
7 we make every effort in fact discovery to  
8 produce to you all of the underlying material  
9 that we provide to our experts in connection  
10 with their reports. But can I sit here and  
11 guarantee in every single case that will be 100  
12 percent perfect? I can't. I think it will be,  
13 but I'm uncomfortable with an order that  
14 requires perfection when -- across a hundred  
15 cases about theoretical documents that I don't  
16 even know what you're referring to right now as  
17 we talk.

18 ARBITRATOR MAAS: And basically  
19 what Mr. Jacobs just said, he also said at pages  
20 194 through 196 of the -- maybe it goes on a  
21 little further than that -- of the hearing  
22 transcript, which is why I worded it the way  
23 that I did, so I'm going to leave that as it is.

24 MS. CHAITMAN: Okay. In paragraph  
25 9, which is discovery request number 11, there

1 is no date by which the Trustee has to give us  
2 this information.

3 ARBITRATOR MAAS: Right.

4 MR. JACOBS: Similarly, yes, we  
5 will provide -- our plan was to provide, Helen,  
6 you with an omnibus amended interrogatory  
7 objections and responses that will be applicable  
8 to all the cases in your Exhibit A in which you  
9 originally served them that will comply with the  
10 Judge's order here on all points.

11 So this amendment will be included  
12 in the amended responses that I mentioned  
13 earlier that we'll provide to you within  
14 approximately a week's time.

15 MS. CHAITMAN: And that would be  
16 true also for request numbers 15, 16 and 18?

17 MR. HUNT: But, Your Honor, this  
18 is Dean Hunt, can I just interject here? Your  
19 order relating to our motions to compel said  
20 promptly. We have no problem with that. I  
21 think the parties can work through these things  
22 promptly, and if there's an undue delay, we, of  
23 course, will let you know.

24 But we certainly didn't put any  
25 limits on Ms. Chaitman, understanding her

1 workload and so forth, and, you know, she's  
2 trying to do that to us and it doesn't seem --

3 ARBITRATOR MAAS: I contemplated  
4 putting in some time period and then decided it  
5 would be better to encourage people to move  
6 promptly and --

7 MR. HUNT: I agree with that. I  
8 think as officers of the court we have an  
9 obligation to proceed promptly under your order  
10 and we have every intention of doing so and we  
11 expect that Ms. Chaitman will do so as well.

12 MS. CHAITMAN: Well, is that a  
13 mutual rule then, that there is no specific  
14 date, but it's as promptly as we can do it?

15 ARBITRATOR MAAS: Let me answer  
16 that. The answer is yes.

17 MS. CHAITMAN: Okay. Okay. That  
18 resolves all of the issues that I had with the  
19 three orders that were entered.

20 ARBITRATOR MAAS: Okay. I guess  
21 one concern I have is to the extent that there's  
22 not a broad stipulation or a stipulation as  
23 broad as set forth in what -- in paragraph A2 in  
24 the Train Klan, et al. order, then it strikes me  
25 that there is sort of a binary approach to this.

1 The need not to answer interrogatories as  
2 discussed in paragraph A3 of that order is  
3 premised on the stipulation or something  
4 approaching it.

5                   You sent a fairly detailed letter  
6 that indicated that I think it was basically  
7 Gordon and Train Klan that could agree to that,  
8 but not others, and I suggested that the parties  
9 need to confer, in paragraph A4 I suggested that  
10 the parties need to confer and see the extent to  
11 which there can be stipulations and those  
12 stipulations obviate the need for the discovery  
13 that otherwise would be essentially available  
14 under paragraph 3. So that's something that  
15 needs to occur.

16                   I don't want to throw a monkey  
17 wrench in here, but I just want to highlight  
18 that so that there is some discussion among the  
19 parties about that, and in the first instance it  
20 probably should deal with the nine or so  
21 defendants we were dealing with. But I suppose  
22 eventually, since I did say all my rulings  
23 should be applied insofar as possible in other  
24 adversary proceedings, I guess it would have to  
25 be expanded potentially to the others. So I

1 just wanted to note that that needs to occur.

2                   There was also the issue of the  
3 Train Klan partnership records. And you've been  
4 asking about dates when the Trustee will produce  
5 things. Can you tell the Trustee when those  
6 materials will be produced, if they exist?

7                   MS. CHAITMAN: They exist, and I  
8 have them from the client. I received them  
9 yesterday and they're going out either today or  
10 tomorrow.

11                  ARBITRATOR MAAS: Okay. Anything  
12 else we ought to take up today?

13                  There is -- obviously it wasn't on  
14 the agenda, but I've received the dueling  
15 letters about the Leonard Miller estate. I,  
16 frankly, haven't yet read or re-reviewed the  
17 complaint in that action --

18                  MR. HUNT: I think that --

19                  ARBITRATOR MAAS: -- the view that  
20 this is a problem for Judge Bernstein and the  
21 motion to dismiss. I gather that the Trustee's  
22 position is this is something I should be  
23 dealing with as a discovery issue?

24                  MR. HUNT: I think Ms. Chaitman's  
25 position on that was that she was going to go



1 ahead and answer the discovery, and then I think  
2 she even did answer some of it, so thank you for  
3 that, and then deal with the motion to dismiss  
4 or motion for summary judgment or whatever with  
5 the trial court.

6 So I don't see anything in front  
7 of you right now with respect to that.

8 ARBITRATOR MAAS: Okay.

9 MR. HUNT: We do have --

10 ARBITRATOR MAAS: Ms. Chaitman?

11 MS. CHAITMAN: Yeah, I think I  
12 have to make a motion to dismiss.

13 ARBITRATOR MAAS: Okay. Then  
14 that's fine.

15 Anything else we ought to take up  
16 today?

17 MR. HUNT: Yes, Your Honor. I  
18 agree with you that with the exception of  
19 Gordon, which I'm not clear Ms. Chaitman has  
20 stipulated for as she still says that they can't  
21 agree to the dates of deposits and withdrawals  
22 in paragraphs 1 through 3, I'm not sure that  
23 we're going to get a stipulation on Gordon.  
24 We'd like to clear that up.

25 And then for the depositions that

1 we had set and have been objected to, we'd like  
2 to go ahead and just get clearance for working  
3 with Ms. Chaitman to get those dates nailed  
4 down.

5 MS. CHAITMAN: Well, that's the  
6 one thing that hasn't been ruled on, Your Honor.  
7 We had moved for a protective order with respect  
8 to, obviously, as I explained to you, we have  
9 been going forward with a lot of the  
10 depositions, but I would move for a protective  
11 order with respect to the people where they  
12 either have conceded the material facts or they  
13 have no personal knowledge because the account  
14 belonged to a deceased spouse or a trust or  
15 whatever, and that's the one motion you haven't  
16 ruled on yet.

17 ARBITRATOR MAAS: Well, I guess  
18 that's correct. When you say they've conceded  
19 Exhibit B, there is lots of caveats to that, and  
20 they certainly haven't, as your letter explains,  
21 they haven't agreed to the paragraph A2  
22 stipulation, potentially with the exception of  
23 Gordon, and even that's not wholly clear. So I  
24 will rule on that in the next few days.

25 But I have to tell you, in all

1     likelihood, I will allow those depositions  
2     subject, obviously, to restrictions in terms of  
3     the amount of time that those depositions will  
4     take.

5                     Is there any reason why each of  
6     those depositions cannot be accomplished in four  
7     hours rather than seven?

8                     MS. CHAITMAN: Well, they've have  
9     been taking -- they have been taking between two  
10    and three hours as it is. So, I mean, I can't  
11    conceive of why they would take four to seven  
12    hours, but --

13                    MR. HUNT: Your Honor, I think  
14    what I would agree to on that is that we will  
15    limit to four hours of on-the-record time  
16    subject to, you know, if it goes long, longer,  
17    and the only reason I can see that it would go  
18    longer is if Ms. Chaitman makes long speaking  
19    objections and things of that nature, which  
20    we've encountered in the past, that we could  
21    give you a --

22                    ARBITRATOR MAAS: -- words that  
23    say unless -- unless Judge Bernstein or I  
24    otherwise direct.

25                    MR. HUNT: That would be great and

1 we're comfortable with that, and, you know what,  
2 with respect to you directing it, we might just  
3 give you a call that day. I don't foresee that.  
4 But if it is -- and with travel and have the  
5 witness there and so forth, would you be okay  
6 with us trying to track you down for that?

7 ARBITRATOR MAAS: Sure. And, in  
8 fact, let me give counsel my cell phone number  
9 since I'm a bit of a moving target. It's  
10 XXX-XXX-XXXX, but I'd ask that the court  
11 reporter just put a space in the transcript.

12 MR. HUNT: We agree with that.  
13 Okay. That's fine. We can do that in four  
14 hours on the record. We've done it repeatedly  
15 in less time than that.

16 ARBITRATOR MAAS: Okay. But let's  
17 not leave Gordon hanging out there. Is it  
18 possible to resolve Gordon? I take it we're  
19 agreed based on the stipulation as revised that  
20 Train Klan -- well, and assuming the partnership  
21 documents, such as they are received, that Train  
22 Klan will not be deposed?

23 MR. HUNT: We don't have a  
24 deposition notice out for Train Klan.

25 ARBITRATOR MAAS: Okay.

1 MR. HUNT: So the only one of the  
2 two that we're talking about here is Gordon.

3 ARBITRATOR MAAS: And I'm trying  
4 to in my pile of papers search for that letter.  
5 Yes, let me come up with it.

6 Well, I think, Ms. Chaitman, if I  
7 understand your letter, you're agreeing to  
8 withdraw affirmative defenses 20, 27, 29 and 46  
9 for Gordon?

10 MS. CHAITMAN: No, that is not  
11 correct. I need to pull up that letter, Judge,  
12 but that's not correct. Hold on one second.

13 ARBITRATOR MAAS: Okay.

14 MS. CHAITMAN: Just to speed me  
15 along, I have the letter now. Which paragraph  
16 were you --

17 ARBITRATOR MAAS: Well, I'm in  
18 paragraph 4 on page 3 of your letter --

19 MS. CHAITMAN: Okay.

20 ARBITRATOR MAAS: -- after you  
21 recite each of those four affirmative defenses,  
22 you say it's not applicable to Gordon.

23 MS. CHAITMAN: Yes, I've put  
24 Gordon and Train Klan in the same category.

25 ARBITRATOR MAAS: Okay. So then

1 as to Gordon there should be no need for a  
2 deposition.

3 MR. HUNT: It does say on page 2  
4 of her letter that none of her clients have  
5 admitted to the precise dates of the deposits  
6 and withdrawals; that the Trustee has  
7 manipulated facts. The stipulation requires  
8 them to stipulate to columns 1 through 5, and  
9 what she's saying is they'll stipulate to 4 and  
10 5. So I just want to clarify that Gordon  
11 stipulates to columns 1 through 5.

12 MS. CHAITMAN: No, because, again,  
13 this is an area of proof that the Trustee has a  
14 burden of, and, you know, it makes a difference  
15 because the Trustee can only recover withdrawals  
16 taken out in the last two years.

17 MR. HUNT: We agree that that's  
18 our burden and that discovery is necessary on it  
19 if you won't stipulate to it.

20 MS. CHAITMAN: Well, okay. The  
21 point is that Edyne Gordon, who is in her  
22 eighties and a widow, had nothing to do with the  
23 account. So whether -- whether the check was  
24 dated before the two-year period or cashed  
25 before the two-year period is a legal argument

1 based on the evidence. It's not something that  
2 she's going to be able to elucidate. She can't  
3 possibly have any testimony relevant to that.  
4 These are issues that the judge is going to have  
5 to determine based on the evidence.

6                   You know, the issue is what was  
7 the date that Madoff showed the withdrawal, what  
8 was the date that the bank actually cleared the  
9 withdrawal, and then there has to be a legal  
10 interpretation of when that withdrawal occurred  
11 as a matter of law. Was it the date that Madoff  
12 charged the account? Was it the date that the  
13 check was credited to Madoff's account at  
14 JPMorgan Chase?

15                   I mean, these are legal issues.  
16 It's not something that Edyne Gordon, an 87-year  
17 old widow, is going to be able to give relevant  
18 testimony on.

19                   MR. HUNT: We disagree.

20                   ARBITRATOR MAAS: I guess, though,  
21 the net effect of that is that I'm going to  
22 allow a deposition of four hours or less, and if  
23 you're correct, it will probably be a lot less  
24 of Ms. Gordon, because you can't have it both  
25 ways. If there's not a stipulation as to

1 columns 1 through 5 and, by way of example, if  
2 there is the potential for a dispute as to the  
3 date, the Trustee at a minimum is entitled to  
4 take a deposition and say what information do  
5 you have to suggest that these dates are  
6 inaccurate and get the concession if it's  
7 accurate that Ms. Gordon doesn't have any  
8 information.

9 So for it -- just to be clear, for  
10 anyone who hasn't agreed to columns 1 through 5,  
11 I'm going to allow the deposition with the  
12 restrictions I described.

13 Anything else from anyone?

14 MR. HUNT: Nothing from us, Your  
15 Honor.

16 ARBITRATOR MAAS: Ms. Chaitman?

17 MS. CHAITMAN: I have nothing  
18 further.

19 ARBITRATOR MAAS: Okay. Thank  
20 you, all. Have a good day and a good weekend.  
21 Take care.

22 MR. HUNT: Thank you, Your Honor.  
23 We appreciate it.

24 MS. CHAITMAN: Thank you.

25 (Time noted: 12:11 p.m.)



1 CERTIFICATE

2

3 I, MONIQUE VOUTHOURIS, a Notary

4 Public of the States of New York and New Jersey,

5 and Certified Court Reporter of the State of New

6 Jersey, License No. X100834, do hereby certify

7 that the foregoing is a true and accurate

8 transcript of the telephone conference as taken

9 stenographically by and before me on the date

10 hereinbefore set forth.

11 I DO FURTHER CERTIFY that I am

12 neither a relative nor employee nor attorney nor

13 counsel of any of the parties to this action,

14 and that I am neither a relative nor employee of

15 such attorney or counsel, and that I am not

16 financially interested in the action.

17

18

*Monique Vouthouris*

19

20 Notary Public of the State of New York

21 My Commission expires December 1, 2019

22

23

24 Dated: January 6, 2017

25

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**From:** Keranen, Kristin L.  
**Sent:** Sunday, June 25, 2017 10:10 AM  
**To:** 'hchaitman@chaitmanllp.com'; 'AKratenstein@mwe.com'  
**Cc:** Sabella, Michael A.  
**Subject:** RE: 1980s trading records

Helen,

As Michael explained to Mr. Kratenstein on April 6, 2017, in 2009 we served subpoenas specifically calling for trading records on Chase Bank, Barclays, and Bear Stearns. These entities produced records, which can be found in E-Data Room 1 in the "Financials" folder. We have searched our Relativity database consisting of over 30 million BLMIS records for the search terms you requested. The hit report is below. As you can see, it is quite voluminous. Moreover, as you know, you are welcome and able to utilize E-Data Room 1's search capabilities to conduct your own investigation and search for such records across the more than four million records we have made available in EDR1. Approximately 800,000 of the records containing unique "hits" are located there.

Name	Documents with hits (Documents that hit on this search term)	Documents with hits, including families (Documents that hit on this search term, plus their parent or attachments)	Unique hits (Documents that hit on only this search term)
"Bank of Tokyo"	5,848	9,744	1,805
Barclays	303,996	653,284	221,434
"Bear Stearns"	765,598	916,630	657,327
Chase	999,707	1,121,276	348,647
Chemical	227,599	380,135	64,771
"Commercial Bank"	15,510	33,597	3,600
Continental	96,782	218,548	51,120
Fidelity	1,548,685	1,649,488	818,842
"Irving Trust"	336	422	102
Lehman	971,112	1,111,786	812,811
"Loeb Rhoades"	23	32	5
"Manufacturers Hanover"	2,453	2,839	1,046
"Marine Midland"	930	1,096	55
Meadowbrook	4,489	6,796	1,538
"Morgan Stanley"	708,745	816,575	86,797
"National Bank of North America"	259	320	226
NSCC	60,305	66,840	38,454

As for your questions regarding "trading records," there is some confusion surrounding that term that requires some clarification and context. We consider a "trading record" as it relates to BLMIS to be a third-party record reflecting verifiable trading activity. For the market-

making and proprietary trading business, BLMIS did conduct actual securities trades, which is confirmed by third-party data, including data from the Depository Trust & Clearing Corporation (“DTCC”). Years ago, in connection with your request for such documents, we produced and made available in E-Data Room 1 all available documents reflecting verifiable trading conducted by the market-making and proprietary trading businesses. However, we never located similar records for investment advisory (“IA”) customers for any period of time.

Beginning in 2016, in connection with your evolving challenge to the “start date” of the Ponzi scheme and the discovery arbitration held in *Picard v. Wilenitz*, we once again endeavored to locate additional third-party records reflecting verifiable trading activity from the earlier periods of the Ponzi scheme. Despite the fact that Judge Maas only ordered the Trustee to produce, to the extent he had not already done so, third-party records reflecting verifiable trading activity of the kind that has long been available to all parties in E-Data Room 1, we nevertheless made several comprehensive productions—including (i) all documents responsive to the search terms “depository trust” and “national securities”; (ii) all documents restored from 201 reels of microfilm from the pre-1992 period; and (iii) all documents responsive to 147 additional search terms applied across the BLMIS Database—that were intended to enable you to conduct your own investigation into any purported trading activity at BLMIS. To our knowledge, these productions did not contain any third-party records reflecting verifiable trading activity at BLMIS, and instead consisted of internal BLMIS “reports” reflecting unverified trading activity. In taking these steps, we have gone above and beyond what Judge Maas ordered and have been transparent with you about our restorations, searches, and productions every step of the way. In fact, this is the first time you’ve objected to the search terms we’ve used, despite the fact that we provided them to you nearly four months ago.

If there are any other specific steps you feel that we should be taking to locate such records, please adhere to Judge Maas’s order, review the indices previously provided to you, and send to us a letter specifically identifying the additional documents you seek to have produced, and where you believe they may be found. As Judge Maas noted, pursuant to Bankruptcy Rule 7026, Rule 26 of the Federal Rules of Civil Procedure applies to adversary proceedings. Rule 26, in turn, requires that discovery requests be limited to items that are relevant to a party’s claims or defenses and proportional to the needs of the case.

Regards,

**Kristin Keranen**  
Counsel

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[bakerlaw.com](http://bakerlaw.com)



**From:** Helen Chaitman [<mailto:hchaitman@chaitmanllp.com>]  
**Sent:** Thursday, June 22, 2017 10:51 AM  
**To:** Sabella, Michael A.  
**Cc:** Kratenstein, Andrew  
**Subject:** RE: 1980s trading records

Michael: I don't mean to pester you but we are anxious to get all of the trading records produced so that we can proceed with depositions regarding the newly-produced documents. It is essential that we be given the entire universe of documents, rather than have you do searches on terms you unilaterally select on a body of documents that we don't have. Please let me know when the production will be completed.

Helen Davis Chaitman  
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**From:** Helen Chaitman  
**Sent:** Tuesday, June 20, 2017 6:09 PM  
**To:** Sabella, Michael A. <[msabella@bakerlaw.com](mailto:msabella@bakerlaw.com)>  
**Cc:** Kratenstein, Andrew <[AKratenstein@mwe.com](mailto:AKratenstein@mwe.com)>  
**Subject:** RE: 1980s trading records

Michael: I look forward to your response to my email. Also, please include production of all National Westminster Bank and NatWest documents.

Helen Davis Chaitman  
Chaitman LLP  
465 Park Avenue  
New York, New York 10022  
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Fax: (888) 759-1114

**From:** Helen Chaitman  
**Sent:** Monday, June 19, 2017 11:35 AM  
**To:** Sabella, Michael A. <[msabella@bakerlaw.com](mailto:msabella@bakerlaw.com)>  
**Cc:** Kratenstein, Andrew <[AKratenstein@mwe.com](mailto:AKratenstein@mwe.com)>  
**Subject:** 1980s trading records

Michael: The search terms you used for the 1980s trading records have omitted some essential terms. As a preliminary matter, would you be good enough to run the following search terms so that we pick up third party documents from the following firms:

Bank of Tokyo

Barclays  
Bear Stearns  
Chase  
Chemical  
Commercial Bank  
Continental  
Fidelity  
Irving Trust  
Lehman  
Loeb Rhoades  
Manufacturers Hanover  
Marine Midland  
Meadowbrook  
Morgan Stanley  
National Bank of North America  
NSCC

Also, am I correct that you have not produced the entire body of 1980s trading records?  
Have you only produced the documents responsive to your search terms?

These are not search terms on which we were consulted and I would never have chosen those search terms.

We request that you immediately supplement your production to include the entirety of the trading records that had not been put in the E-Data room.

This is what Judge Maas ordered the Trustee to produce.

Helen Davis Chaitman  
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1 UNITED STATES BANKRUPTCY COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 - - - - - x

4 SECURITIES INVESTOR PROTECTION  
5 CORPORATION

6 v. CASE NO. 08-01789-smb

7 BERNARD L. MADOFF INVESTMENT  
8 SECURITIES, LLC, et al,  
9 Debtors.

10 - - - - - x

11 IRVING H. PICARD, TRUSTEE,  
12 Plaintiff,

13 v. CASE NO. 09-01161-smb

14 KINGATE GLOBAL FUND,  
15 LTD., et al.,  
16 Defendants.

17 - - - - - x

18 IRVING H. PICARD, TRUSTEE,  
19 Plaintiff,

20 v. CASE NO. 10-04946-smb

21 GOLDENBERG,  
22 Defendants.

23 - - - - - x

24

25

1 U.S. Bankruptcy Court  
2 One Bowling Green  
3 New York, New York  
4

5 July 26, 2017

6 10:09 AM  
7  
8

9 B E F O R E :

10 HON. STUART M. BERNSTEIN

11 U.S. BANKRUPTCY JUDGE  
12

13 ECRO: Unidentified  
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1 Conference re: Madoff Day 2 Deposition Topics

2

3 Discovery Conference Pursuant to Local Bankruptcy Rule  
4 7007-1

5

6 Conference regarding status of factual stipulation in  
7 advance of motions for summary judgment

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25 Transcribed by: Sherri L. Breach, CERT\*D-397

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18  
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22  
23  
24  
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1 P R O C E E D I N G S

2 THE COURT: Let's do the Goldenberg matter first.

3 MR. SHEEHAN: Your Honor, David Sheehan for the  
4 trustee. I've been advised by Mr. Murphy that late last  
5 evening they were able to reach a stipulation which will be  
6 shortly filed with the Court. And so they would  
7 respectfully request that the matter be adjourned today.

8 THE COURT: What's the next date that you have?

9 MR. SHEEHAN: I don't have one.

10 THE COURT: You don't? August 23rd.

11 MR. SHEEHAN: Thank you, Your Honor.

12 THE COURT: Let's do the Kingate matter next.

13 (Pause)

14 THE COURT: Who wrote the first letter?

15 MR. MATTERA: I did, Your Honor. Marshall Mattera  
16 for the trustee. And I'm here with my colleague, Geraldine  
17 Ponto.

18 THE COURT: How do you do? You have the floor.

19 MR. MATTERA: Good morning, Your Honor. We're  
20 here today because we wrote a letter to the Court requesting  
21 a conference regarding a discovery dispute in the adversary  
22 proceeding, Picard versus Suretti (ph), which is adversary  
23 proceeding 09-01161-smb.

24 The trustee served non-party, Tremont Group  
25 Holdings, with a Rule 45 document subpoena on June 7th,

1 2016. The trustee has been trying in good faith to reach a  
2 consensual resolution for over a year, but has now  
3 determined that it cannot obtain compliance with certain  
4 requests in that subpoena. Those requests are numbers one  
5 through four and seven through eight of the subpoena which  
6 is attached as Exhibit B to the trustee's letter.

7 The request seek Tremont's communications and  
8 other documents concerning key players that are specific to  
9 the operation and management of the Kingate Funds, which are  
10 the defendants in this proceeding.

11 This information will bear on the fund's state of  
12 mind and business relationships, including the element of  
13 actual knowledge that this Court has addressed in its orders  
14 substantially denying the fund's motion to dismiss.

15 Tremont persists in challenging relevance, but  
16 it's indisputable that Tremont has relevant and responsive  
17 information. Tremont was co-manager of the defendant,  
18 Kingate Global, for over a decade. Tremont's founder,  
19 Sandra Manskey (ph), introduced Seridian Grasso (ph) to  
20 Madoff and then served on Defendant Kingate Global's board  
21 of directors for ten years while she was also an officer at  
22 Tremont.

23 Tremont also has asserted that its productions  
24 eight years ago contained documents responsive to the search  
25 terms that the trustee has proposed in this proceeding.

1           However, those productions were in response to a  
2       Rule 2004 subpoena issued toward the outset of the trustee's  
3       investigation. The productions were in response to  
4       different requests and were produced using search terms that  
5       are different to the search terms the trustee has proposed  
6       here which are specific to this proceeding.

7           Tremont also has objected that it lacks the  
8       resources to comply with this subpoena, but it has provided  
9       no information to substantiate this claim.

10          Nevertheless, over the past more than a year the  
11       trustee has proposed numerous compromises which would have  
12       eliminated the burdens Tremont has complained of. As to  
13       electronic documents the trustee proposed to further narrow  
14       its already narrow search terms. The trustee also proposed  
15       to exchange discovery related technical information with  
16       Tremont to control costs. The trustee even offered that  
17       Tremont could produce all documents responsive to these  
18       narrow search terms and the trustee would review those  
19       documents subject to a claw back arrangement.

20          In response, Tremont has rejected these  
21       compromises and offered none of its own. Tremont agreed to  
22       run the further narrowed list of search terms resulting in  
23       approximately 50,000 electronic documents, but Tremont  
24       refuses to produce any documents unless the trustee pays its  
25       bender cost of production and \$500,000 that it estimates

1 will be the cost of its own attorneys to review for  
2 responsiveness and privilege prior to production.

3 Under the trustee's proposals these costs would  
4 have been entirely unnecessary. As to privilege, there are  
5 adequate protections available to Tremont that would address  
6 this concern. There are the protective orders in this case  
7 that have claw back provisions and other protections.  
8 There's a claw back provision in Rule 45, and the trustee  
9 even offered to negotiate a claw back arrangement that would  
10 address any remaining concerns as to this issue.

11 As to responsiveness, that review that Tremont  
12 insists that it conduct itself is also unnecessary. The  
13 terms that the trustee has proposed track the request and  
14 the -- these search terms are agreed upon, and the trustee  
15 offered to do the review itself.

16 As to Tremont's hard copy documents, it has stated  
17 that it has approximately 1,200 boxes of documents that are  
18 potentially relevant and responsive to the trustee's  
19 requests. The trustee also offered to review those  
20 documents at their physical location at the trustee's  
21 expense. Tremont rejected that compromise, too, without  
22 offering any compromise of its own.

23 The trustee also proposed that this be resolved by  
24 a discovery arbitrator. Tremont refused to consent.

25 Therefore, the trustee intends to move for an

1 order compelling Tremont to produce documents responsive to  
2 the requests.

3 THE COURT: Thank you.

4 MR. SCHWARTZ: Good morning, Your Honor.

5 THE COURT: Good morning.

6 MR. SCHWARTZ: Seth Schwartz for Tremont.

7 As we set forth in our letter Tremont does not  
8 have resources to do these searches.

9 THE COURT: Is that what the issue is, resources  
10 as opposed to relevance or something else?

11 MR. SCHWARTZ: Oh, it's relevance, too. But, I  
12 mean, it's -- when you're doing the burden analysis one of  
13 the factors, of course, is resources. Another factor is is  
14 it worth the money to go after all this stuff when you're  
15 going to turn up something that's totally irrelevant anyway.

16 Now we -- Tremont litigated these cases for many,  
17 many years and the issue in all these cases is the same,  
18 what did Tremont know about Madoff. And the issue as I  
19 understand it --

20 THE COURT: Well, it's a little different here.  
21 It's what did Kingate know about --

22 MR. SCHWARTZ: Right.

23 THE COURT: -- Madoff.

24 MR. SCHWARTZ: Exactly.

25 THE COURT: And how the communications -- I would



1 think that due diligence that was conducted on Madoff,  
2 communication -- which may have been produced already,  
3 communications between Tremont and Kingate or some of these  
4 other advisors relating to investments would certainly be  
5 relevant. I don't know if they were part of the prior  
6 production.

7 MR. SCHWARTZ: Well, when we were working things  
8 out with Mr. Picard's lawyers way back when we turned over  
9 everything that we had relating to Tremont's due diligence  
10 on Madoff. And --

11 THE COURT: Okay.

12 MR. SCHWARTZ: -- if there were anything that had  
13 the name Kingate on it in connection with that due diligence  
14 it was produced or would have been produced.

15 The -- in theory it seems to make sense that there  
16 might be communications between Tremont and Kingate relating  
17 to Madoff that bear on Kingate's knowledge of Madoff. But  
18 the reality is that even though not only Tremont was co-  
19 manager and, in fact, it was not -- it didn't do -- it  
20 wasn't investigated by a search of Kingate. It was  
21 effectively raising assets for the manager of Kingate and  
22 had no role in the oversight of investments in Kingate. It  
23 was essentially a mechanism for Tremont to place assets with  
24 a Madoff feeder fund in the event its own (indiscernible)  
25 funds ran out of capacity to invest directly with Madoff.

1 And Tremont and Kingate were effectively  
2 competitors and they didn't talk shop about Madoff. They  
3 zealously guarded whatever they knew and were not interested  
4 in sharing that kind of information.

5 And I can -- Your Honor, if there were such  
6 information it was called for again when we were directly  
7 negotiating with Mr. Picard's lawyers. And if anything like  
8 that existed it would have been produced. It would have  
9 been well within the search parameters that were done years  
10 ago. And we've literally over the course of the years  
11 turned over everything that Tremont has that's directly  
12 relevant to due diligence, the communications relating to  
13 Madoff, and we have no reason to believe that there's  
14 anything else out there that truly is relevant that hasn't  
15 already been produced.

16 And during the course of these -- this year-long  
17 meet and confer that we've had, we've essentially begged  
18 counsel to explain to us specifically what kinds of  
19 documents that they haven't already seen that you think we  
20 have that would be relevant. And, you know, we don't get a  
21 response to that. We just get search terms.

22 So we went along with that and we did these  
23 searches and we came up with thousands and thousands of  
24 hits, again, without any reason to believe that any of them  
25 are relevant.

1 Now I happened to bring with me today just a  
2 couple of e-mails that are representative of what you get  
3 when you get these searches. And on the face of them you  
4 can see they have -- they're basically innocuous  
5 communications that have nothing to do with -- I'm sure have  
6 nothing to do with the issues in the case against Kingate.

7 So when you look at the lack of relevance, the  
8 lack of potential relevance, the extraordinary cost  
9 involved, it seems to me that if plaintiff could come up  
10 with a specific list of documents that they don't think they  
11 can get from Kingate that Tremont would have, then we would  
12 have something to talk about. But otherwise it's just a  
13 classic fishing expedition.

14 THE COURT: Well, one of the -- I mean, I'm not  
15 going to tell you you can't make a motion to compel  
16 discovery. Another way to do it is to identify a hundred  
17 documents. You produce them, I'll look at them and if it  
18 looks like this is just a fishing expedition and you still  
19 want them, you'll pay for it, I guess.

20 But if you're going to make the motion and you're  
21 going to make an argument that you just made, I need a  
22 factual record for that, particularly if there's going to be  
23 cost shifting. I need a factual record for that regarding  
24 ability and things like that.

25 So you can go ahead and make your motion and I'll

1 deal with it in that manner.

2 Okay.

3 MR. SCHWARTZ: Thank you, Your Honor.

4 MR. MATTERA: Thank you, Your Honor.

5 THE COURT: The Madoff day two deposition topics.

6 (Pause)

7 THE COURT: How are you?

8 MS. CHAITMAN: Helen David Chaitman, Your Honor,  
9 on behalf of the large group of defendants.

10 We are anxious to set a date for Mr. Madoff's  
11 continued deposition. It is not practical to hold off  
12 taking that deposition until we review this massive set of  
13 new documents which could -- it could take us a year to get  
14 through that. So I don't -- given Mr. Madoff's health and  
15 his age, I think it's important that we take the deposition.  
16 And if it turns out that we discover documents in these new  
17 productions which will require questioning of Mr. Madoff and  
18 he's still available, we'll have to come back to you and  
19 seek permission.

20 THE COURT: So you -- you're proposing to separate  
21 the discovery issue from the continued deposition because  
22 they were tied together last time?

23 MS. CHAITMAN: Right. But the -- now that the --  
24 the trustee has now served a --

25 THE COURT: Let me ask if the trustee has any

1 objection to that procedure?

2 MR. SHEEHAN: No, Your Honor.

3 THE COURT: Okay. So let's talk about the day two  
4 topics right now. Let's get that out of that way and then  
5 we can deal with the discovery issue separately.

6 MR. SHEEHAN: Sounds good.

7 THE COURT: So what's the issue with the day two  
8 topics?

9 MS. CHAITMAN: Well, are you asking me?

10 THE COURT: I'm --

11 MS. CHAITMAN: From our perspective there were --  
12 what Your Honor had previously indicated was that individual  
13 attorneys would be able to pose questions that are specific  
14 to their clients.

15 THE COURT: Yeah. But I remember and I think it  
16 was Ms. Nevel who stood up and wanted to ask follow up  
17 questions regarding day one topics. And, you know, we  
18 talked about that this was -- you were basically  
19 representing the defendants who were still in there for the  
20 purpose of deposition because everybody couldn't come into  
21 the prison --

22 MS. CHAITMAN: Correct.

23 THE COURT: -- and do the deposition. So I'm not  
24 inclined to continue the day one deposition.

25 The day two deposition I thought I had intended

1 that if people had specific questions about that -- who were  
2 still involved, if they had specific questions about their  
3 accounts or, you know, I guess if he had knowledge of their  
4 accounts they could ask about it. It doesn't sound --

5 MS. CHAITMAN: The only --

6 THE COURT: -- like it's going to be a terribly  
7 long deposition.

8 MS. CHAITMAN: The only exception I would ask for,  
9 Your Honor, is that as you may recall the trustee, pursuant  
10 to Magistrate Judge Moss's January 7th, 2017 order has  
11 produced about 500 reels of microfilm documents and some of  
12 those are very, very important, and I would like the  
13 opportunity because those were produced in April and I  
14 didn't have the opportunity to question Mr. Madoff about  
15 them. I would like to be able to question him at least  
16 about those. I mean, I --

17 MR. SHEEHAN: I have no objection, Your Honor.

18 THE COURT: All right. Fine.

19 MS. CHAITMAN: Okay.

20 THE COURT: And then the only other issue I think  
21 that came up were these 302 reports?

22 MR. SHEEHAN: Yes. And we agree with the  
23 examining on those. So --

24 THE COURT: All right. So those are -- it sounds  
25 like the three --

1 MR. SHEEHAN: I think those are the three areas  
2 that you're --

3 MS. CHAITMAN: The only thing I would ask on the  
4 302, it's a heavily redacted --

5 THE COURT: I saw it. You know what, it doesn't  
6 mean anything to me.

7 MS. CHAITMAN: Yeah, because it's so redacted.

8 THE COURT: But if you want to ask him about it,  
9 it sounds like it's going to be about five minutes of  
10 questioning.

11 MS. CHAITMAN: But is there a way, Your Honor, to  
12 get the complete report?

13 THE COURT: That's an issue involving the  
14 Department of Justice.

15 MS. CHAITMAN: Okay, because clearly it's not an  
16 admissible document in its present form.

17 THE COURT: I agree with you on that. I don't  
18 know what you're going to ask him about it, but people seem  
19 to want to ask him about it. So I suppose you can ask him  
20 what he said to the FBI.

21 MS. CHAITMAN: Mr. Sheehan did that already --

22 THE COURT: Yeah. I saw --

23 MS. CHAITMAN: -- in the last deposition. He went  
24 into great length about it, but he didn't have the heavily  
25 redacted 302. But I --

1 THE COURT: No.

2 MS. CHAITMAN: -- I've -- I find it objectionable  
3 to --

4 THE COURT: Well --

5 MR. SHEEHAN: Your Honor, if it was unredacted  
6 would -- I apologize for interrupting.

7 THE COURT: I'm sorry.

8 MR. SHEEHAN: I'm sorry.

9 THE COURT: You know, at best I guess an  
10 unredacted document would set -- first of all, I'm assuming  
11 it's admissible because it's an official report. I don't  
12 know. Obviously, I'm not ruling on it. But, you know, if  
13 the document said Madoff said X, and Madoff says, I never  
14 told these guys that, you know, I don't know where that  
15 leaves us.

16 But, look, you can ask him about it.

17 MR. SHEEHAN: I understand that, Your Honor. The  
18 reason I asked the question is that we asked obviously for  
19 the complete document. The U.S. Attorney, for its own  
20 reasons undisclosed to us, decided that it didn't want to do  
21 that and gave us those portions of it which they felt  
22 directed, you know, to the issue of 1992 that --

23 THE COURT: Is there a procedure by which you can  
24 compel the production?

25 MR. SHEEHAN: We did go through that procedure.



1 It's called filing a certain letter or whatever. The reason  
2 I'm asking Your Honor the question, which realize  
3 respectfully, is that if we can go back to the U.S. Attorney  
4 and say, look, we're going to have trouble with admission  
5 here unless we have a full document that both adversaries  
6 and the Court can examine, maybe I can convince them at that  
7 point because I'll be candid, Your Honor. I see no real  
8 purpose. The U.S. Government's case as far as I'm concerned  
9 is over. We just settled the two, you know, estates. And  
10 there are no further criminal prosecutions.

11 So I see no reason why it can't be -- and there's  
12 nothing in there that, you know, I could represent it  
13 because I have read it. Ms. Chaitman could also read it in  
14 its entirety. They will allow you to go down and read it,  
15 but they won't let you, you know, copy it or do any of those  
16 things.

17 THE COURT: Well, I mean, that's up to her. But  
18 --

19 MR. SHEEHAN: Right.

20 THE COURT: -- the document itself in that form  
21 would not be admissible.

22 MR. SHEEHAN: Okay.

23 THE COURT: I suppose you could call the agent's  
24 also if they remembered. But --

25 MR. SHEEHAN: No. That thought's occurred to us,

1 but, you know, we've early on, there's a long history to the  
2 U.S. Attorney and the trustee, we've asked in the past for  
3 the assistance of the FBI and that's been denied to us  
4 because of, again, pending criminal prosecutions and they  
5 don't want to in any way potentially corrupt their  
6 investigation or their trial.

7 Again, I would be more than happy to call, you  
8 know, the two agents, Mr. Kelley and his colleague.

9 THE COURT: Anybody can testify to what Mr. Madoff  
10 told them, I suppose, on an issue that's relevant.

11 MR. SHEEHAN: It's an admission.

12 THE COURT: Well, it's an admission by the estate.

13 MR. SHEEHAN: Yeah. Right.

14 THE COURT: Okay. All right. So the three  
15 topics, general areas are the 302s, follow up questions on  
16 specific accounts of the people who are still in it, and  
17 this -- these 400 reels or whatever the number is --

18 MS. CHAITMAN: The documents --

19 THE COURT: -- or something in there. Right.

20 MS. CHAITMAN: -- that have just been -- yeah.

21 THE COURT: Anything else?

22 MR. KRATENSTEIN: No, Your Honor.

23 THE COURT: All right. So why don't you just  
24 provide the usual order, with Picower out, and listing the  
25 topics.

1 MR. SHEEHAN: All right.

2 MS. CHAITMAN: Okay.

3 THE COURT: Okay.

4 MR. SHEEHAN: Thank you, Your Honor.

5 THE COURT: Now let's deal with the discovery for  
6 a minute.

7 You know, one of my concerns about discovery in  
8 these cases is every time I had a hearing I get a little  
9 more information, pre-existing information the next time I  
10 have a hearing.

11 From what I've read, although it was in a  
12 different adversary proceeding, Mr. Moss dealt with the  
13 issue of the production of these 4,700 boxes I thought and  
14 said to you, Ms. Chaitman, why don't you look at the list  
15 and see if you can pull out what it is that you propose.

16 MS. CHAITMAN: Here's the problem, Judge. We just  
17 got with the July 14th data this 183 --

18 THE COURT: Yeah.

19 MS. CHAITMAN: Yeah. Okay. So --

20 THE COURT: So that's the universe of the 4,700  
21 boxes we're talking -- oh, 5,300 boxes, whatever the number  
22 is.

23 MR. SHEEHAN: What that represents, that exhibit,  
24 is the 5,300 tapes.

25 THE COURT: Of tapes. Okay.

1 MS. CHAITMAN: Okay. So the thing that's hard,  
2 Judge, is that we had a conference call yesterday with three  
3 people from Baker & Hostetler, Mr. (indiscernible), and we  
4 asked questions about this document which we had not seen  
5 before this letter.

6 And this was done by we were told an outside  
7 vendor. So if a tape is labeled something by an outside  
8 vendor who is not knowledgeable about the case, who is not a  
9 lawyer, I don't feel comfortable simply relying upon that  
10 and making a decision which could impact my clients' --

11 THE COURT: Uh-huh.

12 MS. CHAITMAN: -- lives so significantly. I  
13 really feel that we need to go through these documents and,  
14 you know, some of them -- look, obviously, some of them have  
15 now been produced pursuant to Magistrate Judge Moss's order.  
16 But the vast majority have not.

17 THE COURT: Right.

18 MS. CHAITMAN: And I think clearly we're entitled  
19 to these documents. These are documents that should have  
20 been posted in the e-data room from inception. They should  
21 have been provided to Mr. Davinski (ph) along with a check  
22 for \$30 million so that the trustee's contention throughout  
23 this case that Madoff never purchased securities for any of  
24 the investors or advisory customers could have been tested  
25 against the facts.

1           You know, with -- Mr. Picard has based his claims  
2       upon this fundamental fact. He has led us all to believe  
3       that the e-data room contained the entire universe of  
4       documents --

5           THE COURT: I know the history. As I understand  
6       it, the dispute is who is going to pay for this. The  
7       trustee doesn't -- the trustee would produce this stuff, but  
8       you would have to go and look at it at your own -- on your  
9       own dime, on your own time. That's what they're --

10          MS. CHAITMAN: Yeah. Okay.

11          THE COURT: Is that a fair approximation, Mr.  
12       Sheehan, of the trustee's position?

13          MR. SHEEHAN: Your Honor, essentially that's part  
14       of it, but I would like to be heard. I --

15          THE COURT: Yeah.

16          MR. SHEEHAN: -- don't want to interrupt here.

17          THE COURT: Okay.

18          MS. CHAITMAN: Okay. When I was here last time,  
19       Judge, I had no idea -- we hadn't been provided with this  
20       document which we learned last night --

21          THE COURT: Okay.

22          MS. CHAITMAN: -- has been in existence for --

23          THE COURT: Okay. So now you have it. What --

24          MS. CHAITMAN: -- since 2010.

25          THE COURT: -- do you propose to do with it?

1 MS. CHAITMAN: Well, look, if you say that I can  
2 only have these documents if I pay for them, I can't get the  
3 documents. I don't represent SiPC. I don't have the  
4 capacity to --

5 THE COURT: I understand.

6 MS. CHAITMAN: -- to get --

7 THE COURT: I understand the financial difference  
8 --

9 MS. CHAITMAN: So --

10 THE COURT: -- which is one consideration.

11 MS. CHAITMAN: So basically the trustee who from  
12 day one has taken a factual position no security was ever  
13 purchased for investment advisory customer and when I asked  
14 for documents which proved that, he didn't tell me he had  
15 these documents. And now seven and a half years after he  
16 filed suit we realize all these documents exist and he's  
17 saying, I can have them if I come up with \$2 million.

18 THE COURT: Okay.

19 MS. CHAITMAN: I can't. So, you know, at some  
20 point I'm going to ask for a dismissal of the adversary  
21 proceeding. But right now I'm entitled to the documents and  
22 I think the trustee who has been funded to the tune of a  
23 billion dollars in legal fees can certainly afford to have  
24 SiPC pay \$2 million or Baker & Hostetler can afford it if  
25 that's what's necessary.

1 THE COURT: All right. Let me hear from Mr.  
2 Sheehan.

3 MR. SHEEHAN: Your Honor, I would like to harken  
4 back to something you just said a moment ago and that is  
5 that as we -- as we delve more deeply into this we seem to  
6 be reversing history and looking at it (indiscernible) end  
7 of the funnel. And you start narrowing the spans.

8 If you give me a moment I think I would like to  
9 comment on that because I think it leads to some of the  
10 allegations that are made in the -- against the trustee  
11 which are ill-founded as well as the fact that it ignores  
12 what normally takes place in all of these cases.

13 And I can use the history of the tapes as an  
14 example of how that happens. As Your Honor well knows we  
15 arrived. We've talked about this before. We start  
16 exploring and we hire really talented people from Alex and  
17 FTI to look at it. And that addresses one of the concerns  
18 just expressed by Ms. Chaitman. Lawyers didn't look at it.  
19 Well, to a certain extent that's correct. That doesn't mean  
20 lawyers never looked at any of it. Of course they did.  
21 They filed the complaints. They looked at these documents.

22 But if you're going to search microfilm and  
23 there's 5,300 reels of this and it's not exactly the easiest  
24 thing in the world to do, it cost us, you know, a lot of  
25 money to just restore those 200.

1 THE COURT: When you say restore, that -- I'm not  
2 understanding the technology.

3 MR. SHEEHAN: Okay. What that means is, is that  
4 --

5 THE COURT: You have films and as I said the last  
6 time --

7 MR. SHEEHAN: Right.

8 THE COURT: -- 50 years ago when I went to the  
9 library you put the film in the machine and you roll the  
10 crank and you looked at it.

11 MR. SHEEHAN: And if you had 10,000 minions doing  
12 that you might make your way through it.

13 THE COURT: So what do you mean by restore?

14 MR. SHEEHAN: Well, what we do is we actually  
15 restore it to a digitized state. In other words, it's now  
16 digital. It's searchable. Right. And --

17 THE COURT: So why do you have to do that?

18 MR. SHEEHAN: Why do we have to do that? Because  
19 then you don't have to sit there and go like this. You can  
20 put search terms into it. And e-discovery, if we were to  
21 produce the 19,000 bits of media, you know, we're probably  
22 talking hundreds of terabytes of data here. And I don't  
23 know how you would ever in a lifetime sit down and read all  
24 of those.

25 THE COURT: But if she wants to look at it --



1 MR. SHEEHAN: Why don't we -- can I --

2 THE COURT: Yeah.

3 MR. SHEEHAN: -- continue, Your Honor? I think I  
4 have an answer to that. I understand Your Honor's concern.  
5 I want to try to address it. All right.

6 So what happens is, is that we get in there and  
7 now it's we find these 5,300 tapes in three different  
8 locations. We give Alice the task of first of all creating  
9 this document that Your Honor is now seeing.

10 Now to us that's work product. That's what we've  
11 been working with, et cetera. We utilized that to decide  
12 which tapes we would look at to determine the cash in, cash  
13 out which was our main focus at that point predicated upon  
14 the fact that for the ten years where we did have bank  
15 records and all the other records it was clear that no  
16 securities were being purchased and that this was indeed a  
17 Ponzi scheme.

18 So we focused upon 400 of those tapes. All right.  
19 And those 400 tapes have been in the data room, 400 tapes,  
20 in the data room since 2012.

21 Now Ms. Chaitman says, well, I didn't know about  
22 this. And I understand why she may not have. But if you go  
23 back to our, you know, our rules that we operate under, you  
24 know, the rule is that we have to make initial disclosures.  
25 And if Your Honor will bear with me I would like to read to

1 you the initial disclosure we made in August 1, 2011: "To  
2 all" -- you've got realize I'm -- Ms. Chaitman is not the  
3 only defendant here. We have hundreds and thousands of  
4 these people.

5 So it says in the -- this is quoting: "The trustee  
6 has assumed possession of and/or has access in conjunction  
7 with the Federal Bureau of Investigation" -- you realize the  
8 FBI is there with us hand in hand -- "to approximately  
9 11,700 boxes" -- it's not 13. I'll explain that in a minute  
10 --

11 "Of BLMIS paper records in 19,000 media sources  
12 containing electronically stored information, ESI,  
13 which include, but are not limited to, desktop  
14 computers, laptop computers, AS400s, hard drives,  
15 network storage, microfilm, microfiche, backup  
16 tapes, PDAs, floppy discs, compact discs, and  
17 memory cards."

18 So we have preserved all the data. He assumed  
19 possession of it on April 15, 2008.

20 "With respect to these materials some paper and  
21 some ESI are stored in one or more electronic  
22 databases totaling 3.5 terabytes or 27.9 million  
23 documents."

24 Now that's how you start discovery. You don't  
25 start discovery at the back end which is what's happened

1 here. Someone should have sat down with us from Ms.  
2 Chaitman's office and said, well, you have all these things.  
3 For us to then spread it out all over when the vast majority  
4 of people would have no interest in it. You're supposed to  
5 go through and say, well, what do you have, what does it  
6 show you, what -- you know, what -- none of that ever  
7 happened. You're -- the reason you're hearing this sort of  
8 through the wrong end of the funnel is because of how we're  
9 approaching it.

10 So if someone had sat down we would have done  
11 that. And what they could have done, all right, is searched  
12 the 400 tapes that were on there since 2012. But for the  
13 longest period of time Ms. Chaitman refused. She considered  
14 the data base a document dump. And that, therefore, she  
15 shouldn't have to go look and that we should just cherry  
16 pick stuff for her and produce it.

17 Well, there are orders entered. There are  
18 protective orders. There's an orderly process to all of  
19 this which she chose and still chooses to ignore. So as a  
20 result we find ourselves here today. Now we can't -- and,  
21 you know, re-going through all of this history.

22 Now let me just finish, if I may.

23 And so what happens is is that we're in front of  
24 Judge Moss and she's been complaining for some time about  
25 trading records. Now trading records I think our letter and

1 I hope your letter and I want to last make it clear, that  
2 trading records is a term that requires careful usage and  
3 cannot be just used and bandied about that trading records  
4 show this kind of trading.

5 All right. We have found, I make this statement  
6 flat. All right. We have found no evidence, no evidence  
7 from any third party sources that would substantiate the  
8 fact that any trading took place for customer accounts in  
9 the investment advisory accounts.

10 Now this is with thousands and thousands, the  
11 millions and millions of dollars that our friend, Ms.  
12 Chaitman, is talking about that we spent looking. We had no  
13 preset notion, notwithstanding the outlandish allegation  
14 about the conspiracy with SiPC which I believe Your Honor  
15 has already rejected. But the point is we have no basis  
16 for this. When we find the facts as we find them, it's --  
17 and it's indisputable given all the records that we have  
18 that from back to '98 there is no trading. And there isn't  
19 a record that we've looked at since then that would prove  
20 otherwise.

21 And nothing that Your Honor has been shown to date  
22 by our adversaries proves otherwise, notwithstanding their  
23 protestations to the contrary. And I will address those,  
24 too, if Your Honor will permit me.

25 All right. So what we're looking at is, is so

1 Judge Moss hears this and he turns to us and says, well, you  
2 know, are there other trading records, and we say, well,  
3 we'll look and see what's in the microfilm. All right. And  
4 we look and we identify additional 201 that are 1992 or  
5 earlier predicated upon the fact that Madoff's people, when  
6 they created the tape, put on a date and said this is what  
7 it represents.

8 So we did that and looked at it. We gave those  
9 things to her. So since April she's had 600 tapes that she  
10 can search and look at and tell you what's gone on. All  
11 right.

12 So I want to show Your Honor, if I might, and I  
13 have these for my adversary, too. What these are, are  
14 demonstratives if I could just hand them -- a copy of them  
15 up to Your Honor and give them to Mr. Kratenstein and Ms.  
16 Chaitman. Do you want this --

17 UNIDENTIFIED SPEAKER: I can --

18 MR. SHEEHAN: I can come up and --

19 UNIDENTIFIED SPEAKER: I can --

20 MR. SHEEHAN: I need one for the judge.

21 UNIDENTIFIED SPEAKER: Sure. Do you want all five  
22 or do you want the first two?

23 MR. SHEEHAN: No. I want all of them.

24 UNIDENTIFIED SPEAKER: All of them. Okay.

25 (Pause)

1 MR. SHEEHAN: Thank you, Your Honor.

2 THE COURT: Thank you.

3 MR. SHEEHAN: So what we did is we tried to break  
4 this down into processed and unprocessed. If anything I  
5 would say we started doing some of Ms. Chaitman's work here  
6 for her, but we're happy to do it. All right.

7 So what you can see in the processed and  
8 unprocessed reports, okay, is that which -- these are the  
9 report types on the left-hand side. All right.

10 THE COURT: What's C&S?

11 MR. SHEEHAN: Cash and securities. Customer  
12 ledger, other, other was a designation by Alex when he  
13 couldn't find, you know, something to call it and they just  
14 called it other, profit and loss, PMR is portfolio  
15 management reports, PMR and other. And so they went through  
16 and they did this analysis, et cetera.

17 Now Your Honor can see that there's the 40 -- the  
18 next column is not processed and you see the identity of the  
19 kind of stuff that's not been processed. It's 4,700. We  
20 look at the processed and you see 602, and you can see the  
21 kind of things that we were producing: Positions, stock  
22 record trading 214, customer ledger 263, cash and securities  
23 45.

24 Now Your Honor can say, well, that's not enough of  
25 a representative sample. But what you'll continue to -- if

1 you go through this what you'll see is, if you go to the  
2 next page, is that processed and unprocessed reports by year  
3 on the next page show you that what we did process was  
4 everything from 1992 back which is the focus of our exercise  
5 here because it's been conceded by Mr. Madoff that it didn't  
6 start until 1992.

7 And you can see, therefore, that we thought that  
8 we had produced, you know, between the six -- the 400 --

9 THE COURT: Because you're still contending that  
10 it did start before 1992.

11 MR. SHEEHAN: Oh, absolutely. So -- but this is  
12 -- Ms. Chaitman is suggesting that she wanted records prior  
13 to '92 to show that there was actual trading taking place.  
14 All right. So we gave her all of that. And we didn't give  
15 her any -- you know, so the 4,700 all represent post-1992  
16 documents. All right.

17 Now the next thing we see is, is that these are  
18 the -- the ones for the position, stock record and trading  
19 reports summary. In other words, and this is more readily  
20 seen if we get to the two charts past it, but let me explain  
21 what we're about to look at and that's this, is that there's  
22 a lot of data on these three microfilms, not all of which  
23 would relate to, you know, the idea of whether or not there  
24 was actual trading taking place which as I understand it is  
25 the focus of Ms. Chaitman's inquiry.

1           So what we did is we broke it down into those  
2 categories that would appear to us to be the ones that are  
3 most interesting to her, and they add up to 1,281. And you  
4 say, well, what does that represent. If you look on the  
5 next page you'll see that we have a pie chart and it says,  
6 position stock record trading unprocessed microfilm reels.  
7 What this represents is if you took all of the pages that we  
8 gave Ms. Chaitman, the 168 pages, and broke it down into  
9 what Mr. Madoff said were on these tapes, this is how it  
10 would break down. They had open long positions, stock  
11 records, et cetera. And these are all the ones and how they  
12 broke down into percentages.

13           And then the next page we took the ones that we  
14 processed and broke that down. And this shows you that we  
15 gave her a very good representative sample of all the  
16 documents that are in there including what we believe to be  
17 the ones that she would be most interested in looking at.

18           So in other words this wasn't just a random  
19 exercise by us. An effort was made by the trustee taking  
20 the records that were available to him to respond very  
21 directly to her statement that she did not get trading  
22 records.

23           Now when we had done all this, this goes back to  
24 Judge Moss and your reference taken earlier, and that is, is  
25 that Ms. Chaitman got the -- you know, we did some -- what's



1 in the data room at this point by April, okay, and what's  
2 available to Ms. Chaitman directly. So in the data room is  
3 the 400 tapes that we've put in there back in the early  
4 2000s, or 2011 and '12. It's been there since at least  
5 2012.

6 We ran 147 search terms on that and produced the  
7 documents. And at the time there was no objection. Later  
8 Ms. Chaitman objected to our search terms, added 17 more.  
9 We ran those and gave her those documents. All right. So  
10 those have been from our perspective thoroughly searched by  
11 our search terms and hers.

12 Then what we did is we found the -- those tapes I  
13 was telling you about earlier from '92 back and we processed  
14 those so she could digitally look at them and do her own  
15 search terms, et cetera, and we gave those to her in its  
16 entirety. So now she has that 600 tapes that are shown on  
17 that last pie chart showing a representative sample.

18 So what we're saying here today, this is a long-  
19 winded answer to Your Honor's question. We're not saying  
20 that proportionality means the trustee ahs a lot of money,  
21 she has none, and therefore, you know, we should pay for it  
22 or they should. What we're saying is, is that  
23 proportionality takes place in the context of the discovery  
24 at hand. All right. What are we going to gain by  
25 continuing to look and research and spend money when I think

1 we've given Ms. Chaitman with the 600 that she has more than  
2 adequate data to come to Your Honor and then say, I've  
3 looked at this, look at what I've found. Your Honor, you  
4 should allow me to look, if not at all 4,700, at least the  
5 1,281 that the trustee admits has stock record and other  
6 information on it, and I should be able to look at it.

7 I respectfully submit she has not done that. All  
8 right.

9 Now the two things that we've heard about from Ms.  
10 Chaitman, and in her last submission she gave them to us,  
11 was treasuries. It was exclusive information according to  
12 Ms. Chaitman. The treasuries have been known about since  
13 the very beginning. Very early in the case there was a  
14 letter written by Mr. Hardvac (ph), I think it's been  
15 referred to in this room, in which we disclosed to  
16 (indiscernible) that, in fact, over \$16 billion worth of  
17 treasuries were purchased.

18 It's a money business. It's a Ponzi scheme.  
19 Deals in cash. The question is did he buy any of those  
20 treasuries for customers (indiscernible). If you take any  
21 number of Ms. Chaitman's exhibits and compare those to the  
22 703 account at the same time, no treasuries were purchased.  
23 None. Just what we (indiscernible). She can't find those.  
24 All right.

25 Same thing is true with regard to the banks

1 themselves because she doesn't actually know what's  
2 (indiscernible) bank and a few other banks where she's said  
3 that's actually happened. We have no correlation there  
4 either. She's not making that correlation. All right.

5 The mere fact that we have treasuries being  
6 purchased is unremarkable. It doesn't mean anything, not  
7 unless she can actually show that they're purchased for a  
8 particular account. And that's going to require a little  
9 more legwork than what Your Honor has before you.

10 Mr. Kratenstein, I don't disagree and that's why  
11 he should be entitled to question Mr. Madoff about it. I  
12 don't object to that at all. But he shows Your Honor  
13 certain stocks that he found in there that were delivered in  
14 by his family using that term broadly. We don't dispute  
15 that either. All right. We found that happened. Everyone  
16 who opened an account with Madoff didn't give him cash.  
17 They gave him stock. And when he got it he liquidated it.  
18 All right. He turned it into cash and then started this --  
19 his efforts.

20 There's no trading that. He's cashing it in. And  
21 we can show that. All right. We can show that that's what  
22 actually happened to those stocks.

23 Now it's going to show up, all right, in DTCC  
24 records and so it looks like there's something actually --  
25 because there was only one DTCC account. That was the one

1 for the market making and proprietary. He didn't have a  
2 separate one for investment and advisory. That was a closed  
3 system and no outside world had contact with it. So for him  
4 to then negotiate and sell those stocks that were delivered  
5 in for -- by that customer, they are going to show up. They  
6 -- I don't disagree. They'll show up in DTCC and they'll  
7 show up in the market making records. Why, because --

8 THE COURT: Have the --

9 MR. SHEEHAN: -- there's no other place to  
10 negotiate them.

11 THE COURT: Have the DTCC records been produced  
12 either by DTCC or the trustee?

13 MR. SHEEHAN: Yeah. We produced a number of  
14 those. We -- certainly all the ones that we had going back  
15 to 1998 included in the reference that we've given to Ms.  
16 Chaitman. And I want to be very careful with this date  
17 here. There's a predecessor at DTCC called National  
18 Securities Career Incorporation, NCSS. We have found  
19 records of those.

20 We believe what those are, just to be very clear  
21 here today in court, is that Madoff had access to -- had a  
22 printer in his office and he could print that out. So while  
23 it is a -- I believe an NCSS record, it is actually printed  
24 out in Madoff's office, not delivered by NCSS. I think  
25 that's an important distinction.

1 But in any event, we have produced those records  
2 as well. So we believe that there's enough -- more than  
3 enough information in the 600 that Ms. Chaitman has, all  
4 right, that she should be able to come to Your Honor with a  
5 lot more information than she's giving to you now, to  
6 justify the expense of taking whether it's 1,281 or 4,500  
7 more tapes and putting those together.

8 Now we're going to accommodate her. We -- Your  
9 Honor suggested the last time we were here, well, just give  
10 her the tapes. And I guess what we could do to make it easy  
11 so she doesn't have to have somebody from Iron Mountain  
12 watch her or any of that stuff, we could just copy the tapes  
13 and give it to her.

14 But I don't know -- and to be candid, and I think  
15 Ms. Chaitman would be right if we gave her that we're giving  
16 her a pig in the poke because at that point how the heck  
17 could she go through 4,500 tapes without them being, you  
18 know, digitized and put in a format to -- that can be looked  
19 at.

20 So I believe what's before Your Honor today and I  
21 think that, you know, especially in light of the Judge Moss  
22 history, it's not a failure on our part to comply with two  
23 prior orders or with Judge Moss's order. We believe and I  
24 believe Judge Moss believed that we have complied with what  
25 he asked us to do. And that what he then suggested to Ms.

1 Chaitman is, okay, fine, just where we are here today; that  
2 what you can do is look at the 600 and if you come back to  
3 me and you demonstrate to me that there's reason to be had  
4 that the trustee should incur the further expense of putting  
5 those other tapes together, that's fine.

6 What I would also suggest in adding to that is  
7 that Ms. Chaitman has those 600. She says she wants to go  
8 back and talk to Mr. Madoff. I agree. We should go. We  
9 should go sooner rather than later. And she can utilize  
10 that opportunity to also ask him and then there would be  
11 perhaps even a further record. I submit, anticipate the  
12 argument that Mr. Madoff will have no knowledge of this as  
13 demonstrated by what he was telling us the last time we were  
14 down there. His knowledge of the back office, the trades,  
15 the records and everything is very minimum. And when asked  
16 about it he disavows any real knowledge.

17 So I don't know what we're going to gain, but I'm  
18 more than happy to go down. I'm more than happy to have her  
19 answer. But to suggest today I think -- I think there's no  
20 motion pending to be frank. I think Ms. Madoff -- I  
21 apologize again. I've made that mistake before and I do  
22 apologize. Is that Ms. Chaitman should put together a  
23 motion utilizing those 600 and Mr. Kratenstein can add to  
24 that. And they've heard what I've had to say today. And I  
25 recognize that we've given them a lot of additional data.

1 But I think we've given more than enough to put  
2 the onus on them to come to Your Honor with a motion that  
3 says, wait a minute, whatever the trustee did here is not  
4 enough. I need the rest of those tapes. And I think at  
5 that point we can respond again, all right, and I'm not  
6 holding anything back here. It's not like I've got more  
7 than I can tell Your Honor. We're very comfortable that  
8 there's nothing on those 600 nor would there be anything on  
9 the 4,500 that will contradict what we're representing and  
10 have represented throughout the course of the case, that  
11 there was no trading going on on the investment advisory  
12 side of the house.

13 Thank you, Your Honor.

14 THE COURT: Okay.

15 MR. KRATENSTEIN: Your Honor, may I be heard?

16 THE COURT: Sure.

17 MR. KRATENSTEIN: Thank you, Your Honor.

18 Good morning, Your Honor. Andrew Kratenstein of  
19 McDermott, Will & Emory for the Sage defendants.

20 I want to start by thanking Mr. Sheehan for  
21 acknowledging that the Sages did, in fact, deliver stock.  
22 That's actually the first time -- to Mr. Madoff. That's  
23 actually the first time we've heard that admission. He also  
24 just said several things just now that I've never heard  
25 before and was very interested to hear. He said that, yes,

1 they admit that the Sages delivered stock to Mr. Madoff, but  
2 they can show that Mr. Madoff liquidated the stock and then  
3 started his scheme.

4 I would love to see that evidence. I haven't seen  
5 it yet. Maybe it will help, if you show it to me, resolve  
6 this case, maybe it won't. I don't know. But I would love  
7 to see it sooner rather than later. We certainly haven't  
8 found it.

9 What we have seen, and I attached some of this to  
10 my letter back from the last hearing, are documents that  
11 appear to show from Mr. Madoff's records and we did try to  
12 make the showing to show what we were finding in this  
13 microfilm, that (a) stocks were delivered to Mr. Madoff back  
14 in the late '70s by my clients. That's now apparently  
15 admitted. And that stocks were held according to Mr.  
16 Madoff's records at least for some period of time at  
17 different banks including National Westminster Bank and  
18 MBNA, stocks or other securities including an RCA bond.

19 And if the trustee has evidence showing that those  
20 records of Mr. Madoff's are inaccurate and that, in fact,  
21 those positions were liquidated before the Sages gave the  
22 instructions to liquidate them later in time, I would love  
23 to see it. Show it to us as soon as possible and maybe that  
24 could help streamline this whole matter.

25 I will note that we do have a defense that



1 regardless of whether the trades actually occurred, the mere  
2 fact that the Sages directed the trading is a defense, but  
3 put that aside it would also obviously be interesting for us  
4 to know if the trades actually occurred or not.

5 And so we've been trying to figure that out  
6 through all of the records that have been produced and it is  
7 difficult to do. There are tons and tons of records that  
8 have now been produced.

9 The other thing we can't -- and we just got these  
10 pie charts and other charts which, again, I wish I had seen  
11 before this morning so that we could study them. But, for  
12 example, talking about those cash and securities records  
13 that were on that list, we have done our review of those.  
14 We think that they're very interesting records. We have  
15 only found them at what has been produced for the house 17.  
16 We have investment advisory accounts through 1985.

17 And we -- maybe they exist beyond that and maybe  
18 they don't. We're curious as to why. That's one of the  
19 reasons we think that the production is incomplete. It's  
20 unclear to us why there are no post-1985 cash and securities  
21 reports for the house 17 account. And we have questions  
22 about that.

23 Turning to proportionality, you know, I will just  
24 quickly take to the factors here. We have already addressed  
25 resources. The importance of the issues at stake in this

1 action, as Your Honor knows the importance is, is quite  
2 large. There's also a public side of this, obviously, what  
3 happened with Mr. Madoff, what was the scope of the fraud,  
4 et cetera.

5 The amount of controversy from my clients at least  
6 this case involves their life savings. So that's certainly  
7 to them a very high amount of controversy.

8 In terms of the access to the data, the trustee  
9 has all the access. We only have access to what we have  
10 been given.

11 Resources, we've already discussed, and the  
12 importance of the discovery to resolving the issues in this  
13 case, we do think it's very important for the reasons that I  
14 just said and also because as Ms. Chaitman eluded to, when  
15 the trustee puts forward a \$30 million expert and says,  
16 there is no evidence and my case -- their case is based on  
17 an absence of evidence of real trading, then it's really  
18 incumbent on them to make available to the defendants all of  
19 the evidence.

20 And for them to say, well, we have to define what  
21 is a trading record and what isn't, as I believe my  
22 colleague, Mr. Hutmaker (ph) said at the last hearing to  
23 you, what is a trading record and what isn't, what counts  
24 and what doesn't, that's for the fact finder. It's not for  
25 the trustee to say, well, there's no third party

1 verification so you should disregard it. That will be for  
2 the fact finder to decide what credence to give to Madoff  
3 records or other records. And if Mr. Sheehan and his  
4 colleagues want to prove that these are fake accounts or  
5 dummy accounts or what have you and that they can show us  
6 through DTCC or other records that these stock trades never  
7 occurred or the stock was liquidated, they'll have every  
8 opportunity to do that. But we think we need to see the  
9 documents so that we can test their assertions.

10 Thank you, Your Honor.

11 THE COURT: All of the documents, all 4,700 boxes?

12 MR. KRATENSTEIN: Well, now that we've seen this,  
13 you know --

14 THE COURT: What's this?

15 MR. KRATENSTEIN: Well, I'm sorry. The records  
16 that have been produced it is possible that we may be able  
17 to narrow that. We hadn't seen this breakdown that we got  
18 until this morning. I was going to come in here this  
19 morning and say, yes, because we just got this chart here  
20 and for my clients at least, my clients bought and held  
21 securities so they were not switched right to begin. The --  
22 and the Sages (indiscernible) account they bought and held  
23 securities between 1982 approximately and 2007. Okay.

24 So that's a long period of time and we need the  
25 records of that entire period of time to see what happened

1 to those securities, if anything. And, again, if they have  
2 the documents that they say prove beyond a shadow of a doubt  
3 or whatever evidentiary standard you want to apply that they  
4 -- that it didn't occur, or preponderance of the evidence,  
5 whatever. Here's the evidence showing that these trades  
6 didn't occur, here's the evidence showing what Mr. Sheehan  
7 just said that they were liquidated and assumes the stocks,  
8 give it and then show it to us.

9 THE COURT: Your clients were giving trading  
10 instructions to Madoff.

11 MR. KRATENSTEIN: Yes. In fact, I'll -- my letter  
12 which was dated July 20 -- June 26th rather, if you look at  
13 Exhibit C, that's an evidence of one of the instructions.

14 (Pause)

15 THE COURT: I'm sorry. What tab is that?

16 MR. KRATENSTEIN: I don't --

17 THE COURT: Oh.

18 MR. KRATENSTEIN: It's Exhibit C of my June 26th,  
19 letter.

20 (Pause)

21 MR. KRATENSTEIN: I'll --

22 THE COURT: I'm looking for it.

23 MR. KRATENSTEIN: Yeah.

24 THE COURT: How frequently did your client give  
25 trading instructions to Madoff?

1 MR. KRATENSTEIN: My client gave trading  
2 instructions -- he met with Madoff at least once a year or  
3 more. There are more letters like this. There are at least  
4 a half dozen that we found. He regularly gave trading  
5 instructions. It would depend on the time. So they bought  
6 securities, as I said, in the early '80s on their  
7 instructions and there was a buy and hold strategy mostly,  
8 but certain positions were changed over time at the  
9 direction of the Sages.

10 THE COURT: Did the trades that the Sages were  
11 instructing show up on the customer statements?

12 MR. KRATENSTEIN: They did.

13 THE COURT: All right. Now you're in a different  
14 position than the usual investment advisory customer who  
15 gave him trading discretion. I understand.

16 MR. KRATENSTEIN: Yes, Your Honor.

17 THE COURT: All right.

18 MR. KRATENSTEIN: Thank you.

19 THE COURT: Yeah.

20 MS. CHAITMAN: Judge, I won't take the time to  
21 refute everything that Mr. Sheehan said, but I -- we have  
22 made extensive use of the e-data room. We had no knowledge  
23 that the 400 reels of documents were -- that were put in the  
24 data room came from the reels. We just looked at the e-data  
25 room. It didn't say these are reels. But of course we

1 looked at the e-data room.

2 But if you recall last May, May 2016, we had  
3 argument on my motion to compel because I made the point  
4 that a lot of my clients would not have claw back exposure  
5 if they were given credit for their profits prior to this  
6 foot strike.

7 And so I've always been asking for these records.  
8 And as you, I'm sure you remember Ted Jacobs represented to  
9 the Court that everything had been produced and was the --  
10 in the e-data room. And he was bragging about how proud he  
11 was of how complete the e-data room was.

12 So now of course we realize the e-data room is not  
13 complete and it -- it's not -- you know, to say at this  
14 point when they've been hiding this evidence for eight  
15 years, to say that they should just give me the microfilm  
16 reels when we're talking about this enormous massive  
17 documents and we don't really know everything that's on  
18 them. That little label done by the vendor is not  
19 satisfactory to assure us of everything that's on each reel.

20 If I get the microfilm reels, first of all, it's  
21 not manageable for me. I mean, we're talking about probably  
22 15 million pages of documents.

23 Number two, the trustee's going to have to put  
24 them in a readable, searchable format for himself anyway  
25 because he's going to have that expense anyway because how

1 do you -- they won't be Bate stamped. If I go to trial and  
2 I have a document what am I going to do? I'm going to say,  
3 it's from microfilm reel screen number 178, you know, from  
4 reel -- it's not manageable.

5 In addition to which without it being searchable  
6 when you're talking about 50 million pages of documents it's  
7 as good as saying, you're not entitled to the evidence.

8 THE COURT: You know, I remember going on document  
9 reviews when I was a young lawyer. We didn't have digitized  
10 documents. We looked at the documents --

11 MS. CHAITMAN: Judge --

12 THE COURT: -- and made copies of what we wanted.

13 MS. CHAITMAN: -- I doubt very much that you had  
14 50 million pages of documents.

15 THE COURT: Actually, I probably did in the --

16 MS. CHAITMAN: Okay.

17 THE COURT: -- first case I did.

18 MS. CHAITMAN: And was your adversary someone who  
19 had been paid a billion dollars in a case that involves 64  
20 billion and where your adversary made representations for  
21 eight years that everything had been produced --

22 THE COURT: Okay.

23 MS. CHAITMAN: -- and now our hands are going to  
24 be tied because we don't have the financial wherewithal to  
25 prove how dishonest the trustee has been.

1 THE COURT: All right. Look, I don't have a  
2 motion before me. And I think that Sage is a slight -- is  
3 in a different position than Ms. Chaitman's clients because  
4 they can identify specific instructions and I think you  
5 ought to deal with that issue about whether or not you can  
6 produce the corresponding trading records for that day or  
7 whatever it is, that it's supposedly shows up on his account  
8 statements and then he can compare trading records with  
9 account statements.

10 With respect to the 4,700 boxes, you're not going  
11 to convince me to simply force the trustee to turn them  
12 over. You're going to have to make a showing through a  
13 motion or through negotiation.

14 What I would suggest since you're also appear to  
15 be suspicious about the labeling or not suspicious, dubious  
16 of its accuracy, is pick a small representative example, 20  
17 reels, digitize them and then you can show me why these are  
18 relevant or how these are relevant. If I look at the sample  
19 and you don't show it to me, then you'll have to pay for  
20 whatever it's going to cost. It's essentially a cost  
21 shifting issue and a relevance issue, I suppose.

22 That's how I would suggest you deal with it in the  
23 short term. but otherwise you can make a motion to compel  
24 discovery. But he's going to come back and say, they're  
25 irrelevant, but if you really want to look at them you pay



1 for it. And it's going to be the same issue.

2 MS. CHAITMAN: Then I would suggest, Your Honor,  
3 that you require the trustee to give me all the microfilm  
4 and I will go through that process and try to do it myself  
5 because I don't want to be in a position --

6 THE COURT: So you'll pay for it?

7 MS. CHAITMAN: No. He's just going to give me the  
8 microfilm. He's not going to digitize it.

9 THE COURT: Well, he has to copy it --

10 MS. CHAITMAN: He doesn't have that.

11 THE COURT: He has to copy it.

12 MS. CHAITMAN: Well, he can certainly afford to  
13 copy --

14 THE COURT: I think my suggestion is better. Look  
15 through the list, pick a small representative sample, 20  
16 reels, look through the reels. You can -- I assume you're  
17 going to look at reels that correspond to dates in your  
18 customers' statements if you're talking about treasury bills  
19 or treasury trading to see if you can make a connection  
20 because that's really what we're talking about.

21 MS. CHAITMAN: No, it isn't.

22 THE COURT: Well, that's what I understand it to  
23 be --

24 MS. CHAITMAN: No.

25 THE COURT: -- because there's no --

1 MS. CHAITMAN: Can I correct that?

2 THE COURT: Well, my understanding from what I've  
3 heard is that the BLMIS other aspects of the business were  
4 always engaged in actual transactions. They just weren't  
5 allocated to customers. They were for BLMIS. And your  
6 argument is that they were allocated because there are  
7 corresponding entries in the customer statements where they  
8 should have been allocated. Isn't that what you're arguing?

9 MS. CHAITMAN: There are different arguments.  
10 With respect to the treasury, I can match up based on Mr.  
11 Madoff's testimony as to where the treasuries were I can --  
12 and he testified that all of those treasuries, I didn't  
13 realize it was 16 billion as Mr. Sheehan said. Those were  
14 purchased with 703 account money. Mr. Madoff testified --

15 THE COURT: Wasn't that just because he was  
16 putting the cash into treasury bills to get more interest?

17 MS. CHAITMAN: No, because he had -- he had money  
18 -- he held them to term. He held them to maturity. They  
19 showed up on customer statements. And they were at Bearn  
20 Sterns. They were at Fidelity. They were at Lehman  
21 Brothers. They were at Morgan Stanley.

22 But that's an issue post-1992. I'm focusing on  
23 the 1980s, and what we've already found from the 450 odd  
24 reels that were produced is we can show that the convertible  
25 bond trading of our customers was supported by the ownership

1 of the securities that their statements showed they had.

2 THE COURT: All right. Well, you can --

3 MS. CHAITMAN: But we've only gotten a small  
4 portion of those. I showed -- I included those in my  
5 submission to Your Honor before the last -- I -- there were  
6 NCSS statements which Mr. Sheehan has conceded are  
7 legitimate and there were National Bank of North America and  
8 National Westminster Bank statements. And I assume they  
9 were generated the same way. Computers were linked up and  
10 they could be printed out by Madoff of what was being held  
11 in custody.

12 So, you know, we've already established that these  
13 documents prove that there was real trading done for the  
14 customers. Now obviously that's going to be determined by  
15 the fact finder, but we've only gotten a sliver of the  
16 documents. That's why --

17 THE COURT: Well, you can show that in a motion to  
18 compel discovery. There are a lot of issues that are  
19 involved with cross-shifting. If you can convince me that  
20 there's gold or that there may be gold in these unproduced  
21 documents, then, you know, fine.

22 MR. SHEEHAN: Your Honor, I know you don't want to  
23 hear more from me, but I just wanted to add one thing.

24 THE COURT: Yeah. I'm just -- you know --

25 MR. SHEEHAN: No. I don't want to argue. I just

1 want to -- a point of clarification. It's our position that  
2 Ms. Chaitman has all of the 1992 tapes, '92 and prior.

3 THE COURT: Pre-'92?

4 MR. SHEEHAN: Yes. At least according to the  
5 markings on them and the --

6 THE COURT: Well, you know --

7 MR. SHEEHAN: -- stuff we've found. So --

8 THE COURT: -- if she makes a motion for it, you  
9 just give me an affidavit saying they've all been produced.

10 MR. SHEEHAN: All right. Fine, Your Honor.

11 THE COURT: You don't have --

12 MR. SHEEHAN: Fine. Okay. I just want --

13 THE COURT: Because there's no point --

14 MR. SHEEHAN: -- to be clear.

15 THE COURT: -- there's no point in arguing back  
16 and forth about that.

17 MR. SHEEHAN: No. I understand.

18 THE COURT: Now with respect to Sage, you may be  
19 able to work out something to get the --

20 MR. SHEEHAN: We'll actively try that, Your Honor.

21 THE COURT: -- records that correspond to the  
22 trading directions that were being sent over the years.

23 MR. SHEEHAN: Yes, Your Honor.

24 THE COURT: It certainly sounds relevant and --

25 MR. SHEEHAN: No question, Your Honor. And we

1 will do that.

2 THE COURT: All right.

3 MR. KRATENSTEIN: Thank you, Your Honor.

4 THE COURT: All right. And give me the order for  
5 the second day. Let's complete that deposition and schedule  
6 a trial.

7 MR. SHEEHAN: Thank you, Your Honor.

8 THE COURT: All right. Thank you.

9 (Proceedings concluded at 11:09 a.m.)

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I N D E X

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IDENTIFICATION

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N/A

**CERTIFICATE**

I, Sherri L. Breach, certify that the foregoing  
transcript is a true and accurate record of the proceedings.

**Sherri L  
Breach**

Digitally signed by Sherri L Breach  
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**Sherri L. Breach**

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August 25, 2017

### VIA EMAIL

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Re: *Securities Investor Protection Corporation v. Bernard L. Madoff Investment Securities LLC*, Adv. Pro. No. 08-01789 (SMB) – *Requests for Documents*

Dear Ms. Chaitman and Mr. Kratenstein:

We write regarding the ongoing email correspondence concerning your requests for additional documents and productions, which has been the subject of a great deal of back and forth. We understand from Ms. Chaitman's recent email that she now seeks "all documents showing BLMIS' or Madoff's ownership of securities, regardless of whether it is House 5 or House 17, and covering the entire period from 1975 – 2008."<sup>1</sup> Given the continued confusion surrounding our recent productions and the Trustee's data set, we write in an effort to comprehensively address your questions so that our discussions going forward can be more focused.

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<sup>1</sup> July 29, 2017 6:53 a.m. E-mail from H. Chaitman to K. Keranen ("July 29 Email").

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I. Summary of the Trustee's Data Set and Disclosures

As a preliminary matter, given Ms. Chaitman's ongoing complaints regarding the Trustee's discovery practices, we would like to remind you of the contents of the Trustee's data set and reiterate when this data was disclosed to you.

As you have long been aware, shortly after his appointment, the Trustee's counsel and consultants took custody of thousands of boxes of hard copy documents and thousands of pieces of media, along with multiple BLMIS computer systems, found at the offices of BLMIS, its offsite storage facilities, and other locations. We have produced to you three indices that catalog the data collected at BLMIS: the Microfilm Index, the Warehouse index (containing list of all hard copy documents), and the Media Index (containing list of all electronic media, etc.). From this enormous collection of data, the Trustee created the BLMIS Database, which contains approximately 4.7 million scanned hard-copy documents and 25 million electronic documents, totaling just under 30 million documents.<sup>2</sup>

As the Trustee has disclosed in hundreds of initial disclosures and discovery responses over the years, not all hard copy and electronic records were scanned and/or restored, given the immense volume of data. Rather, the Trustee's counsel and consultants scanned and/or restored those records that, in the course of their investigation, they determined were potentially relevant and proportional under Fed. R. Civ. P. 26, given the enormous restoration costs and the cumulative and duplicative nature of the underlying data. The scanned and restored materials were added to the BLMIS Database to facilitate the Trustee's administration of the BLMIS estate—including the investigation of the Ponzi scheme, determination of individual claims, and prosecution of hundreds of adversary proceedings. Accordingly, as specifically detailed on the BLMIS Warehouse Index and Media Index produced to you by the Trustee, there are thousands of boxes of hard-copy documents and thousands of pieces of media that have not been scanned or included in the BLMIS Database—including unrestored microfilm reels, which we will address in greater detail below.

From the approximately 30 million records in the BLMIS Database, as well as certain third-party records obtained in the course of his investigation, the Trustee created E-Data Room 1, a database that contains over four million records. E-Data Room 1 was created pursuant to the Order Establishing Litigation Case Management Procedures for Avoidance Actions (ECF No. 3141) (the "LPO"), which permits the Trustee to produce an expert report "and provide access to the underlying documentation on which the summary report relies in an electronic data room for review by the defendants." LPO at 4. The Trustee first provided Ms. Chaitman with access to E-Data Room 1, and the corresponding E-Data Room 1 Manual, which the Trustee makes

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<sup>2</sup> A large number of these electronic documents are e-mails, calendar entries, and other files created within the hard drives of various computers at BLMIS.

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available to all defendants, on June 23, 2014. We also sent Ms. Chaitman a letter, dated September 26, 2016 (the “September 2016 Letter”), which provided a detailed and personalized description of the contents and structure of E-Data Room 1. This letter was sent in connection with the Trustee’s early production of the Bruce G. Dubinsky Expert Report (the “Dubinsky Report”), which the Trustee produced in the *Wilenitz* matter, as a courtesy, in order to facilitate your analysis of the Trustee’s data.

As detailed in the September 2016 Letter, E-Data Room 1 contains documents separated into three general categories/folders: (i) Data, which contains account statements and ledgers organized by data source (including microfilm); (ii) Documents, which contains copies of scanned hard-copy documents obtained from BLMIS facilities and third parties, organized by document type and/or source; and (iii) Financials, which contain financial documents obtained from numerous institutions, organized by source. Collectively, these folders contain—and have long contained—many of the documents you continue to seek, including documents responsive to certain search terms you have asked the Trustee to run, which we will address in greater detail below.

As evidenced by the disclosures made by the Trustee over the years, including those described above, the Trustee has never represented that E-Data Room 1 contains all of the data in the Trustee’s custody, or that the Trustee had restored and/or processed every BLMIS document and piece of media. We find Ms. Chaitman’s accusations to the contrary to be unfortunate, particularly given that our disclosures in these cases have always endeavored to be, and in fact have been, consistently clear on these points.

Finally, Ms. Chaitman’s ongoing accusations regarding the Trustee’s significant “trading records” productions and representations to the Court are false and do not appear to be made in good faith. First, contrary to Ms. Chaitman’s repeated assertions, Judge Bernstein never “ordered” the Trustee to produce anything at the March 17, 2016 hearing in the *Wilenitz* matter. Rather, the Court permitted Ms. Chaitman to file a motion to compel, which she eventually filed and was subsequently referred to arbitration before Judge Maas, on the consent of both parties. At the December 13, 2016 arbitration, Judge Maas instructed the Trustee to produce any additional pre-1992 “trading records,” similar to the Depository Trust & Clearing Corporation (“DTCC”) records Ms. Chaitman had pursued in the past. After this arbitration, and consistent with Judge Maas’s order, the Trustee took the following steps:

- Searched the BLMIS Database using the search terms “Depository Trust” and “National Securities” and produced all documents that hit on those search terms;
- Restored documents from 201 reels of microfilm with pre-1992 labels and produced all documents restored from those reels; and



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- Searched the BLMIS Database with an additional 147 search terms and produced all documents that hit on those search terms (that were not already in E-Data Room 1).

Contemporaneously with these efforts, the Trustee disclosed to Ms. Chaitman the specific steps he was taking to identify additional “trading records,” including all search terms applied across the BLMIS Database, and provided Ms. Chaitman with the BLMIS Warehouse and Media Indices, as noted above. At no point did Ms. Chaitman object to any of the search terms used or any of our restoration efforts. Instead, months later, in connection with the “Day Two” deposition briefing, Ms. Chaitman first objected to those search terms and proposed a set of alternate ones, which we have been discussing over the past few weeks and will address in detail below.

Moreover, as a reminder, Judge Maas denied Ms. Chaitman’s second motion to compel in his March 15, 2017 order [ECF No. 15236] (the “March 15 Order”), which was based largely on the Trustee’s efforts described above. In that order, Judge Maas directed Ms. Chaitman to confer with the Trustee in person concerning any additional document requests —after consulting the indices we provided—which “should enable Ms. Chaitman to formulate more focused requests for trading records.” *Id.* at 6. Judge Maas further directed Ms. Chaitman to “send the Trustee’s counsel a letter specifically identifying the additional documents that she seeks to have produced, and where she believes they may be found.” To be clear, Ms. Chaitman has never complied with this order, and instead improperly raised this issue before the Court in connection with the Madoff deposition hearings.

We hope this summary of the Trustee’s data and disclosures puts a stop to the unfortunate accusations Ms. Chaitman has lodged against the Trustee’s efforts and leads to a more productive relationship going forward. We are certainly willing to work with you in good faith in order to ensure that you have access to discovery that is consistent with the requirements and limitations of Fed. R. Civ. P. 26. To that end, this letter is intended to provide you both with the information you need to specifically target the materials you seek.

## II. Microfilm

Turning to our recent correspondence, Ms. Chaitman’s email of July 27, 2017 at 5:38 p.m. raised several questions with respect to the microfilm the Trustee already has made available in E-Data Room 1 and through various productions (“July 27 Email”). Ms. Chaitman

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asked us to identify the reels of microfilm already made available, their location on the Microfilm Index, as well as identify unavailable reels.<sup>3</sup> See July 27 Email.

As you know from the Microfilm Index we produced to you, the Trustee is in possession of 5,299 reels of microfilm. The reels are color-coded on the Microfilm Index to identify their production and restoration status, as is further described below.

<u>Color on Index</u>	<u># of Reels</u>	<u>Status</u>
Pale Green	201	Fully restored
Yellow	394	329 Fully Restored; 65 Samples Only Restored
Red	4,704	Not restored / unavailable
<b>TOTAL</b>	<b>5,299<sup>4</sup></b>	

In the July 27 Email, you asked the Trustee to identify any “written instructions” provided to the litigation consultants who worked with the Trustee on the microfilm-related review and production. *Id.* Regardless of whether such written instructions exist, such communications between Trustee’s counsel and his litigation consultants are protected work product and/or subject to the attorney-client privilege and we will not waive these protections.

A. Documents Restored from 394 Microfilm Reels in 2009-2010

During his original investigation in 2009 and 2010, the Trustee restored documents from 394 microfilm reels and added those 413,000 documents to E Data Room 1. These 394 reels are highlighted in yellow on the Microfilm Index. Based on the BLMIS box labeling,<sup>5</sup> the documents restored from these reels consist of data for the time period between 1978 and 2008. Of the 413,000 documents restored from these 394 reels, all but approximately 7,400 of these have long been available to you in E-Data Room 1. The 7,400 documents restored from these reels that are not in E-Data Room 1 were provided to you in various productions made by the Trustee since December 2016, including documents responsive to 147 search terms we ran to assist you in identifying BLMIS “trading records,” discussed above.<sup>6</sup> This includes the most

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<sup>3</sup> An Excel version of the Microfilm Index was provided to Chaitman LLP on July 14, 2017, and a PDF version was filed with the Court, also on July 14, 2017. The Trustee subsequently clawed back the Excel version and provided replacement Excel spreadsheets to both Chaitman LLP and McDermott Will & Emery on August 8, 2017.

<sup>4</sup> There are an additional 7 reels of microfilm that have been restored, but were identified as duplicates of other microfilm reels. The demonstratives discussed at the July 26 hearing reflect a total of 5,306 microfilm reels, which includes these 7 duplicate reels.

<sup>5</sup> A limited number of reels that were found without labeling were subsequently labeled by the Trustee’s consultants.

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recent production of August 10, 2017, in which the Trustee produced the remaining 4,400 documents restored from these reels that were not previously available to you.<sup>7</sup> As such, you now have access to all documents restored from these 394 reels.

There are 65 microfilm reels identified on the Microfilm Index as a “sample,” meaning that the Trustee restored a small number of pages from these reels, but did not restore the full reel. These “sample” documents have been produced to you and/or made available to you in E-Data Room 1 and are highlighted in yellow on the Microfilm Index. The number of pages restored for a particular “sample” reel is also contained on the Microfilm Index, in the column labeled “Page Count.”

**B. Documents Restored from 201 Reels of Microfilm in 2017**

In addition, in response to your requests for BLMIS “trading records,” the Trustee restored and produced all documents contained on 201 reels of microfilm that, based on the BLMIS box labeling, were likely to contain information from 1978 through 1992. As you know, these are the reels highlighted in pale green on the Microfilm Index. The entirety of these 201 reels have been restored and produced to you over the course of three productions between February and March of 2017, as set forth below:

<b>Production Description</b>	<b>Date Produced to Chaitman LLP</b>	<b>Date Produced to McDermott</b>
321 Documents from Set of 167 Reels	2/3/2017	2/17/2017
Remainder of the Set of 167 Reels	3/6/2017	3/23/2017
34 Additional Reels of Microfilm	4/26/2017	5/3/2017

Given the Trustee’s recent productions, including the August 10, 2017 production discussed above, you now have access to all documents that the Trustee restored from BLMIS microfilm reels, which are identified on the Microfilm Index as yellow or pale green.

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<sup>6</sup> March 21, 2017 Letter to S. Howell from M. Shifrin re: Supplemental Production.

<sup>7</sup> During our efforts to identify all documents restored from these 394 reels that were neither formally produced nor made available in E-Data Room 1, we discovered that there were 26 documents that were produced to Ms. Chaitman but not to Mr. Kratenstein. Accordingly, these additional 26 documents were included in the August 10, 2017 production to Mr. Kratenstein. The Trustee also produced a duplicate hard drive on August 21, 2017 after Ms. Chaitman’s firm had difficulty accessing the original hard drive.

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### C. Unrestored Microfilm

There are 4,704 reels of microfilm that remain unrestored. These reels are highlighted in red on the Microfilm Index. Because the documents contained on these microfilm reels have not been restored, they have not been produced and/or made available to you in E-Data Room 1.

### III. Documents Responsive to Specific Search Terms

Between June and August 2017, you requested the production of documents responsive to a total of 22 search terms that you provided (the “22 Search Terms”).<sup>8</sup> The Trustee ran your 22 Search Terms across the BLMIS Database, which generated the following hits:<sup>9</sup>

<b>Name</b>	<b>Documents With Hits</b>	<b>Documents With Hits, Including Families</b>	<b>Unique Hits</b>
"Bank of Tokyo"	5,848	9,744	1,169
Barclays	303,996	653,284	219,144
"Bear Stearns"	765,598	916,630	656,835
Chase	999,707	1,121,276	347,152
Chemical	227,599	380,135	64,087
"Commercial Bank"	15,510	33,597	3,025
Continental	96,782	218,548	50,401
Fidelity	1,548,685	1,649,488	817,833
"Irving Trust"	336	422	99
Lehman	971,112	1,111,786	811,651
"Loeb Rhoades"	23	32	5
"Manufacturers Hanover"	2,453	2,839	996
"Marine Midland"	930	1,096	43

<sup>8</sup> The 22 Search Terms are: “Bank of Tokyo,” Barclays, “Bear Stearns,” Chase, Chemical, “Commercial Bank,” Continental, Fidelity, “Irving Trust,” Lehman, “Loeb Rhoades,” “Manufacturers Hanover,” “Marine Midland,” Meadowbrook, “Morgan Stanley,” “National Bank of North America,” NSCC, NatWest, National Westminster Bank, “Westminster Bank,” NBNA, and “Bank! Trust”.

<sup>9</sup> The results reflected in the chart above reflect the hits for search terms run across the Trustee’s BLMIS Database using optical character recognition (“OCR”) technology. The Trustee makes no representations as to the existence or non-existence of hits, beyond those search results noted above. As you know, while OCR is an effective means of searching across large volumes of data, it is an imperfect technology, particularly with respect to handwritten paper, or aged historical documents where certain characters and words may not be recognizable and/or may be presented in a format that does not yield a positive hit. The Trustee is undertaking his own search across historical files maintained at BLMIS for documents relevant to the start date of the fraud, which the Trustee will produce as appropriate. The Trustee reserves all rights to supplement and amend the search results in the above-referenced chart.

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Meadowbrook	4,489	6,796	1,515
"Morgan Stanley"	708,745	816,575	86,456
"National Bank of North America"	259	320	221
NSCC	60,305	66,840	38,232
NatWest	4,848	271,293	1,995
National Westminster Bank	2,584	3,113	0
"Westminster Bank"	2,726	3,265	76
NBNA	295	326	138
Bank* Trust	37,105	61,690	18,308

The 22 Search Terms yielded a total universe of 4,102,555 documents (4,865,811 with families). Critically, 1,427,671 of these documents (1,482,240 with families) are already available to you in E-Data Room 1. In addition, the Trustee has separately produced—in connection with the various productions detailed above—132,820 documents responsive to the 22 Search Terms in the *Wilenz* matter and 148,548 documents in the *Sage* matters. Accordingly, you already have access to many of the documents you seek.

Moreover, as we have previously disclosed to you, the “Financials” folder of E-Data Room 1 contains subfolders organized by certain financial institutions, including: Bank of Tokyo, Barclays, Bear Stearns, Fidelity, JPMorgan Chase, Lehman Brothers<sup>10</sup>, and Morgan Stanley. These folders are likely to contain additional documents that interest you. As a reminder, E-Data Room 1 is also fully searchable.

#### IV. Next Steps

Given the huge volume of responsive documents currently available to you, we request that you use these materials to determine what specific documents may interest you so that we can agree to a more focused inquiry. This is consistent with our previous request that you propose more narrowly tailored search terms.

As Judge Maas reminded both parties in his March 15 Order, Fed. R. Civ. P. 26 “requires that discovery requests be limited to items that are relevant to a party’s claims or defenses and proportional to the needs of the case,” before instructing both parties to “keep these requirements in mind” at a meet and confer. *Id.* at 6. The wholesale production of millions of records—with its accompanying production costs—is not proportional to the needs of these cases, especially

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<sup>10</sup> Documents relating to Lehman Brothers are found under the “Barclays” folder due to the merger of those entities.

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given the volume of responsive records already in your possession, which you can use to formulate a narrower inquiry.

With respect to Ms. Chaitman's cases, and in further keeping with the March 15 Order, we request that you review the indices that we have provided, which "should enable Ms. Chaitman to formulate more focused requests for trading records." *Id.* at 6. As discussed above, Judge Maas further directed Ms. Chaitman to "send the Trustee's counsel a letter specifically identifying the additional documents that she seeks to have produced, and where she believes they may be found." *Id.* We request that Ms. Chaitman review the detailed indices we provided over eight months ago, which we believe will assist in formulating more tailored requests for the documents sought, consistent with Judge Maas's directive.

Going forward, we propose a good faith meet and confer to discuss a more narrowly tailored approach for identifying any additional documents, keeping in mind the Court's guidance during the July 26, 2017 hearing concerning the microfilm. At that hearing, the Court placed the burden on Ms. Chaitman to identify a small sample of additional microfilm reels that she seeks and explain why they are relevant before ordering further microfilm restoration. *See* July 26, 2017 Hearing Tr. at 50:10-21. We suggest applying the same principles to the non-microfilm documents discussed above in advance of a good faith meet and confer.

Finally, we cannot continue to accept e-mail requests to various individual members of the Baker & Hostetler team for documents, search terms, or the like. Rather, all requests for documents should copy Ted Jacobs, Max Shifrin, and Cara McGourty and take the form of a letter or other formal written request for documents. It is important and in the best interests of these cases that we standardize the process and create a clear record to ensure we are all on the same page.

Please provide us with your availability for a meet and confer. We look forward to meeting with you soon.

Sincerely,

/s/ David J. Sheehan

David J. Sheehan  
Partner

**CHAITMAN LLP**  
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*HELEN DAVIS CHAITMAN*  
*hchaitman@chaitmanllp.com*

September 5, 2017

**Via Email:** [dsheehan@bakerlaw.com](mailto:dsheehan@bakerlaw.com)

David J. Sheehan, Esq.  
Baker & Hostetler LLP  
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New York, NY 10111

***Securities Investor Protection Corporation v.  
Bernard L. Madoff Investment Securities LLC,  
Adv. Pro. No. 08-01789 (SMB) –  
Requests for Trustee to comply with  
Defendants' document demands***

Dear Mr. Sheehan:

I write in response to your August 25, 2017 letter ("Your Letter") in the hopes that we can move forward with the production by the Trustee of the documents to which Defendants are entitled. We will comment first on certain inaccuracies in Your Letter and then make some suggestions as to how we can constructively move forward so that, ultimately, the truth will become clear. You are correct, in the first paragraph of Your Letter, that our goal is to gain access to "all documents showing BLMIS' or Madoff's ownership of securities, regardless of whether it is House 5 or House 17, and covering the entire period from 1975 – 2008." The reason we need all of these documents is that Mr. Madoff's testimony has made clear that his sole proprietorship and, from January 22, 2001 on, BLMIS, operated as one unified entity. The Trustee's insistence, from inception, on viewing Madoff's operation as three separate entities (proprietary trading, market making, and investment advisory) has created a totally artificial and inaccurate picture of Madoff's operations and has led, in our view, to very serious factual misrepresentations to the courts and the customers.

We understand that the Trustee has now provided to us three indices that catalog the data collected at BLMIS:

- a. The Microfilm Index;
- b. The Warehouse index (containing a list of hard-copy documents);
- c. The Media Index (containing a list of all electronic media); and



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We further understand that, from “this enormous collection of data, the Trustee created the BLMIS Database, which contains approximately 4.7 million scanned hard-copy documents and 25 million electronic documents, totaling just under 30 million documents.” Your Letter at 2.

And we now understand that “there are thousands of boxes of hard-copy documents and thousands of pieces of media that have not been scanned or included in the BLMIS Database – including unrestored microfilm reels.” *Id.*

The Trustee created the E-Data Room which contains “over four million records.” *Id.* We also now understand the fallacy that the E-Data Room provides the Defendants with the discovery they need. As you say in Your Letter, the E-Data Room is simply a small subset of documents that support the Dubinsky Report. As you know from participating in Mr. Madoff’s deposition, the Dubinsky Report is not worth the paper it is printed on. The errors made by Mr. Dubinsky are so fundamental that it is impossible to take the Report seriously. Thus, in our view, the Trustee has compounded his misrepresentations of what happened here not only by the publication of the Dubinsky Report but also by creating the fiction that the E-Data Room provides Defendants with all of the documents they need in order to defend themselves. For example, Ted Jacobs made the following representations to Judge Bernstein on May 17, 2016:

What the Trustee has done in discovery in this case is quite remarkable, and I believe unprecedented, and we're very proud of it. Without even receiving a discovery request, we provide every single defendant with what we refer to as their core account documents, which are their customer statements, the cash activity of their accounts, their correspondence files with all of their correspondence to and from BLMIS over the life of their account; the account opening and closing documents; and in addition to that all of the applicable financial statements from BLMIS's financial institutions showing the bank transfer records from those independent third parties with respect to the cash activity in each and every single account. Where we don't have a complete set of customer statements, we produce portfolio management reports, which contain exactly the same information of the cash activity over the life of the account. Where we don't have those, we produce spiral notebooks where various employees over time at BLMIS kept meticulous notes of that cash transaction activity. And we provide that to every defendant. Wilenitz is no exception. We produced, I believe, approximately, 19,000 records that we've indexed to make it easy for the defendant to navigate exactly what's in that --

THE COURT: 19,000 records for Wilenitz?



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MR. JACOBS: For the Wilenitz accounts, correct, over the life of their accounts. And that includes all of the items that I just discussed.

Chaitman Exh. M, 5/17/16 Tr. at 7:2 – 8:4.

With respect to the Dubinsky report, Mr. Edwards stated as follows:

As Ms. Chaitman knows, we have an expert named Mr. Dubinsky, who offers a very comprehensive report on that subject, and all of the data that he considered and utilized in connection with his opinions have been made available to every defendant through an electronic data room that contains, approximately, 4 million records.

*Id.* at 10:19-24.

Mr. Jacobs represented to this Court that the Trustee had put into the E-Data room every possible document a defendant could want to see relating to his defenses:

MR. JACOBS: Absolutely. Every single document -- what we've endeavored to do, Your Honor, is that what we refer to as Electronic Data Room 1 contains all of the underlying documents considered by Mr. Dubinsky and we're also building upon that in including documents that our other experts who we may offer to prove transactions and who do other functions, all of those documents as well. So, that's approximately 4 million records. Not pages, but records.

And it's an enormous amount of data that I believe is unprecedented, at least in my career, and for that reason we've structured the data room in a very organized fashion with issue trees. So if you're a participant who's accessing the data room, you'll see something that you might be familiar with already in terms of like, an Outlook email folder tree that has topics, broken down documents, financials, third party records; and then each of those trees can be broken down further to drill down to J.P. Morgan statements. You know, Chicago Options Trading information, Depository Trust Clearing Corporation documents; all of those types of things. It's also searchable.

**So, absolutely the Defendant has the ability to conduct whatever investigation they believe is relevant to the claims of their defenses, the same that our expert did, and they have access to all the same information that our expert did. And we did that to be transparent and**

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**to provide any data that any litigant believes that they should have access to.**

*Id.* 11:11 – 12:14 (emphasis added).

Aside from the fact that the E-Data Room provides Defendants principally with the documents on which the Trustee intends to rely to prove the Trustee's contentions, the E-Data Room has been set up in a way which is terribly inconvenient and unfair to Defendants. Someone using the E-Data Room is not able to copy or print out a document. Rather, in order to obtain a workable copy of the document, the attorney for the Defendant is required to write to Baker & Hostetler and specifically request the documents they seek. While that, conveniently, provides your firm with evidence of precisely what information each defense counsel may be relying on, it imposes an enormous and unnecessary burden on defense counsel.

You state that Judge Bernstein "never 'ordered' the Trustee to produce anything at the March 17, 2016 hearing in the Wilenitz matter." Your Letter at 3. In fact, as you know, Judge Bernstein ordered the Trustee to produce any trading records he had not previously produced. ("Well, if the Trustee has additional documents, he's got to supplement the disclosure or the production, which he does by adding them to the data room.") 5/17/16 Tr. at 69:19-21.

As you know, not a single document was put into the E-Data Room in compliance with Judge Bernstein's May 17, 2016 order. Similarly, Magistrate Judge Maas ordered, on January 4, 2017: "To the extent there are any additional relevant records of securities trading that have not been made available . . . through Data Room 1, **they must promptly be produced.**"). *See In re: Bernard L. Madoff*, Adv. Pro. No. 08-01789 (SMB) ECF No. 14807 at 3.

Moreover, at the June 29, 2017 hearing, Judge Bernstein acknowledged that there were two court orders requiring the production of trading records:

THE COURT: **There are two orders directing you –**

DAVID SHEEHAN: But why does she get discovery when she can't even prove what she's saying?

THE COURT: **There are two orders directing you to turn over the documents.** You haven't told me that they're not relevant. You –

Tr. 6/29/17 at 74:11-16 (emphasis added).

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**Search terms**

You say that, following the January 4, 2017 order, the Trustee “searched the BLMIS Database with an additional 147 search terms and produced all documents that hit on those search terms (that were not already in E-Data Room 1.” Your Letter at 3-4. This is inconsistent with what you told Judge Bernstein on July 25, 2017:

So in the data room is the 400 tapes that we’ve put in there back in the early 2000s, or 2011 and ’12. It’s been there since at least 2012. We ran 147 search terms on that and produced the documents. And at the time there was no objection. Later Ms. Chaitman objected to our search terms, added 17 more. We ran those and gave her those documents. All right. So those have been from our perspective thoroughly searched by our search terms and hers.

Tr. 7/26/17 at 34:23-35:17.

As you know, neither I nor Andrew Kratenstein was ever consulted on the 147 search terms you applied to the paper and electronic documents in the BLMIS Database. We gave you a separate list of 22 search terms we would want used to search the BLMIS Database and, although we have received repeated assurances from your firm that you would produce to us the documents responsive to our search terms, you have never produced those documents. We do not need you to apply our search terms to documents in the E-Data Room because we have access to those documents. What we need you to do is run our search terms on the BLMIS Database and produce to us all of those documents because we do not have access to them.

We raised this issue with Kristin Keranen the day after the hearing at which you stated that you had run our search terms and provided us with the responsive documents. She responded on the same day, July 27, 2017:

Hi, Andrew,  
My apologies for the confusion. Mr. Sheehan misspoke yesterday. While we did provide the hit results to you and Ms. Chaitman (see attached), we have not produced the documents. I believe the search terms as currently drafted would return over 3 million documents, not including the 800,000 already in EDR1. If you would like these documents produced from the BLMIS database, we are open to discussing that with you.

Regards,  
Kristin

**Kristin Keranen**  
Counsel

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### BakerHostetler

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----- Original message -----

From: "Kratenstein, Andrew" <[AKratenstein@mwe.com](mailto:AKratenstein@mwe.com)>

Date: 7/26/17 10:40 PM (GMT-05:00)

To: "Sabella, Michael A." <[msabella@bakerlaw.com](mailto:msabella@bakerlaw.com)>

Cc: Helen Chaitman <[hchaitman@chaitmanllp.com](mailto:hchaitman@chaitmanllp.com)>

Subject: RE: 1980s trading records

Michael,

Mr. Sheehan made a representation in court today that Ms. Chaitman and I understood to mean that documents containing the search terms in the emails from Ms. Chaitman below were produced to her. I have not received those productions. I have spoken with Ms. Chaitman, who says she did not receive them either. Was such a production in fact made?

Thanks.

Andrew

**Andrew B. Kratenstein**  
Partner

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In another July 27, 2017 email, Ms. Keranen represented that the 22 search terms were being applied to the entire BLMIS Database:

Helen,

The search terms are being run across the entire BLMIS database (approximately 30 million documents), not E-Data Room 1. As I explained, of the approximately 4 million hits in the database on those terms, 800,000 are already loaded in EDR1. In my other email regarding the summary of our call, I explained that the Trustee originally restored 400 reels of microfilm and uploaded it to the BLMIS

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database. More than 413,000 documents from those reels are in EDR1. Another 3000+ documents from those 400 reels were separately produced to you and Andrew as a result of search terms run. There are only approximately 4400 documents from those 400 reels that are not in EDR1 and have not been produced to you or Andrew, because they did not hit on any search terms. We are willing to produce those and have begun that process. The 201 reels have been produced to you in their entirety.

I hope this clears up any confusion.

Regards,  
Kristin

Kristin Keranen  
Counsel

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In Your Letter at 8, you state that the “22 Search Terms yielded a total universe of 4,102,555 documents (4,865,811 with families).” Of that amount, you say that 1,427,671 of these documents (1,482,240 with families) are already in the E-Data Room and that the Trustee has separately produced 132,820 responsive documents in the Wilenitz matter and 148,548 responsive documents in the Sage matter. According to my calculations, that leaves 3,102,203 responsive documents that have not been made available to us.

The production of the remaining 3,102,203 documents in the BLMIS Database that are responsive to our 22 search terms are essential to the defense of our clients. We believe these documents will show the securities owned by Madoff and by BLMIS throughout the period of our clients’ investments. Indeed, the vastness of the responsive documents demonstrates their importance to our defense. We are defending approximately 70 separate adversary proceedings in which you are calculating clawback liability based on transactions which date back to the early 1980s in some cases. The first step in moving forward is for you to put these 3,102,203 documents (which are already in the BLMIS database and are thus already fully restored and searchable) in the E-Data Room and make them accessible to us so that we can download them or make copies without having to enlist your firm’s assistance.

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### **Microfilm**

#### **The 394 microfilm reels**

As with the other documents we are seeking, we are seeking production of all microfilm records that evidence trading by Madoff and BLMIS from 1980 on. You say in your letter that “in 2009 and 2010, the Trustee restored documents from 394 microfilm reels and added those 413,000 documents to E Data Room 1.” However, you then say that “of the 413,000 documents restored from these 394 reels, all but approximately 7,400 of these have long been available to you in E-Data Room 1.” Thus, your first sentence is not correct because 7,400 documents were not put in E-Data Room 1. However you represent that these 7,400 documents have been produced to us in the 2017 productions. What is not clear, however, is whether we now have 100% of the documents contained in the 394 reels or whether we simply now have 100% of the documents the Trustee selected from the 394 reels. Please clarify this.

Your firm produced to us on August 10, 2017 a hard drive, which we were unable to access. We have just this week obtained a replacement hard drive but have not yet viewed the documents. You represent in Your Letter (at 6) that the August 10, 2017 production contains “the remaining 4,400 documents restored from these reels that were not previously available to you.” Again, my question is: do the 394 reels contain documents that the Trustee did not restore and which have still not been produced to us?

#### **Unrestored microfilm reels**

You explain that there are 4,704 reels of microfilm that remain unrestored. As per Judge Bernstein’s suggestion, we intend, as a preliminary matter and on a gradual basis, to designate 20 reels for our review. However, we note in Your Letter, at fn. 9, that the Trustee intends to review “historical files” which we assume includes unrestored reels. To the extent he restores reels for his own review, we request that all of these reels be promptly provided to us or put into the E-Data Room in a form which allows us to download them.

We have a great many questions about the microfilm reels. For example:

1. There are enormous gaps in the box numbers of the reels of microfilm produced and there is no explanation provided for this.
2. There are a great many documents that appear to be missing. For example, in 1985, there are microfilm records for internal Madoff reports known as Cash and Securities for Settlement. From 1986 until 1993, there are no such records.
3. Mr. Shiffrin states in his recent letter “that there are thousands of boxes of hard-copy documents and thousands of pieces of media that have not been scanned or

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included in the BLMIS Database—including unrestored microfilm reels.” This raises the possibility that the thousands of documents proving securities transactions for many years of Madoff’s operation have not been produced.

This, of course, is a very serious issue for us because we have thousands of securities positions that we believe Madoff’s records will prove were legitimate. If the Trustee does not make all of Madoff’s records available to us, our clients are being denied due process of law.

At this point, we would ask that the Trustee restore and provide to us 100% of the contents on the following four reels: Boxes 2621, 3318, 3348, and 3487.

Yours sincerely,

/s/ Helen Davis Chaitman

Helen Davis Chaitman

HDC:leb

cc: Michael A. Sabella ([msabella@bakerlaw.com](mailto:msabella@bakerlaw.com))  
Edward J. Jacobs ([ejacobs@bakerlaw.com](mailto:ejacobs@bakerlaw.com))  
Kristin L. Keranen ([kkeranen@bakerlaw.com](mailto:kkeranen@bakerlaw.com))  
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Carole Neville ([carole.neville@snrdenton.com](mailto:carole.neville@snrdenton.com))



From: Helen Chaitman <[hchaitman@chaitmanllp.com](mailto:hchaitman@chaitmanllp.com)>

Date: 10/11/17 7:06 PM (GMT-05:00)

To: "Sheehan, David J." <[dsheehan@bakerlaw.com](mailto:dsheehan@bakerlaw.com)>, "Sabella, Michael A." <[msabella@bakerlaw.com](mailto:msabella@bakerlaw.com)>

Cc: "Kratenstein, Andrew" <[AKratenstein@mwe.com](mailto:AKratenstein@mwe.com)>

Subject: Documents from the BLMIS data base

Dave: Can you please let me know within 48 hours whether you intend to produce to us all of the documents from the BLMIS data base that are responsive to the search terms that Andrew and I gave you?

Helen Davis Chaitman

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October 18, 2017

### VIA EMAIL

Helen Davis Chaitman  
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Re: *Securities Investor Protection Corporation v. Bernard L. Madoff Investment Securities LLC*, Adv. Pro. No. 08-01789 (SMB) – *Requests for Documents*

Dear Ms. Chaitman:

We write in response to your October 11, 2017 e-mail and your September 1, 2017 letter. As we explained in our letter, dated August 25, 2017, you currently have access to over 1.5 million of the approximately 4.9 million documents (with families) responsive to the 22 Search Terms you have proposed. Accordingly, we requested that you use your access to these documents to formulate a narrower inquiry, given that the production of such a large volume of documents—many of which are undoubtedly irrelevant—would be cost-prohibitive and inconsistent with the relevance and proportionality standards articulated in Fed. R. Civ. P. 26. We also proposed to meet and confer with you in good faith, consistent with Judge Maas's directives in his March 15 Order, so that we can cooperatively develop a method for identifying and producing any additional non-objectionable discovery.

Unfortunately, you have ignored these requests entirely. Instead, you have restated your insistence that we produce all documents responsive to the 22 Search Terms—which are based on nothing more than the names of common and well-known financial institutions—notwithstanding the specific objections we articulated and without referencing our proposed compromise or in-person meeting.

We remain happy to meet and work with you in good faith to narrow the search terms in order to identify specific documents that interest you and/or eliminate irrelevant materials that do not. However, absent any effort on your part to work with us and focus your search terms based

Atlanta Chicago Cincinnati Cleveland Columbus Costa Mesa Denver  
Houston Los Angeles New York Orlando Philadelphia Seattle Washington, DC

on an informed review of the documents you already have, we will not be producing any additional records.

Not only is our position consistent with the relevance and proportionality requirements of Fed. R. Civ. P. 26 and Judge Maas's March 15 Order, it is also consistent with Judge Bernstein's recent guidance with respect to the restoration of additional microfilm reels. As you will recall, rather than order the restoration of all of the BLMIS microfilm in the Trustee's possession, Judge Bernstein suggested that you review a small sample of additional reels and, based on that review, identify what additional records you believe would be relevant and proportional to your defense of these cases. *See* July 26<sup>th</sup> Hearing Transcript, at 50; *see also In re Sun Edison, Inc.*, 562 B.R. 243 (Bankr. S.D.N.Y. 2017) (Bernstein, J.) (denying motion to compel on proportionality grounds). In keeping with Judge Bernstein's guidance, we are simply asking that you make use of the more than 1.5 million responsive records already in your possession and work with us to target relevant, non-objectionable materials.

As a reminder, most of the approximately 1.5 million documents responsive to your search terms are available in E-Data Room 1. While the majority of these documents are customer statements and ledgers located in the "DATA" folder, the "FINANCIALS" folder contains tens of thousands of responsive documents in subfolders organized by financial institution, including Bank of Tokyo, Barclays, Bear Stearns, Fidelity, JPMorgan Chase, Lehman Brothers, and Morgan Stanley. In addition, the "DOCUMENTS" folder contains thousands of responsive scanned hard-copy records collected from both BLMIS and third parties, all of which are organized in various sub-folders by source. The search functionality and organizational structure of E-Data Room 1 should make identifying specific types of records that interest you easy and straightforward.

Additionally, tens of thousands of documents that we have produced to you since December 2016 are also responsive to your proposed 22 Search Terms. Stemming from our good faith efforts to identify additional "trading records," those productions included documents responsive to dozens of separate search terms we applied across the BLMIS Database targeting specific BLMIS reports that reflect purported trading activity, as well as the restoration and production of all documents from all known microfilm reels containing pre-1992 materials. Given the wealth of documents already available to you and our track record of cooperation, we do not understand your reluctance to use these documents in order to target additional materials of interest, or otherwise work with us to narrow your inquiry.

Finally, with respect to your request that we add all of these materials to E-Data Room 1, the purpose of that database is to make available the large volume of records the Trustee's experts consider in connection with their various reports. The Trustee never intended it to be a repository of enormous document productions based on unfocused search terms that inevitably include irrelevant material, or to relieve defendants of their responsibility to host document productions they obtain through discovery. Nor has the Trustee ever treated it as such.

Accordingly, we currently do not intend to add to E-Data Room 1 any documents we may produce in connection with your proposed search terms. Should the Trustee's experts rely on or

otherwise consider any additional material in connection with any future reports, the Trustee will make those documents available in E-Data Room 1, as he has done in the past.

We reiterate our desire to have a good faith meet and confer to resolve all outstanding discovery disputes. Please let us know how you would like to proceed.

Sincerely,

*/s/ David J. Sheehan*

David J. Sheehan  
Partner

**From:** Sheehan, David J.

**Sent:** Wednesday, October 25, 2017 10:58 AM

**To:** Helen Davis Chaitman ([hchaitman@chaitmanllp.com](mailto:hchaitman@chaitmanllp.com)) <[hchaitman@chaitmanllp.com](mailto:hchaitman@chaitmanllp.com)>; Andrew B. Kratenstein ([akratenstein@mwe.com](mailto:akratenstein@mwe.com)) <[akratenstein@mwe.com](mailto:akratenstein@mwe.com)>

**Cc:** Peter Goldman ([PaGoldman45@gmail.com](mailto:PaGoldman45@gmail.com)) <[PaGoldman45@gmail.com](mailto:PaGoldman45@gmail.com)>; Fein, Amanda E. <[afein@bakerlaw.com](mailto:afein@bakerlaw.com)>

**Subject:** FW: Documents from the BLMIS data base

Helen,

The Morgan Stanley and Meadowbrook search terms collectively generate over 820,000 documents, including family members. Of those documents, approximately 515,000 have already been made available to you in E-Data Room 1 or through separate productions. The vast majority of the remaining 305,000 documents that have not been made available to you hit on the Morgan Stanley search term. The Meadowbrook search term generates less than 5,000 hits, including families.

Given the relatively limited population of the Meadowbrook hits, as a showing of our good faith, we will produce these documents to you. These documents will need to be imaged (or "tiffed"), reviewed, and processed for production. We will produce these documents to you next week.

However, we maintain our objections with respect to the approximately 300,000 documents that hit on the Morgan Stanley search term. You already have in your possession 500,000 documents that hit on this search term. The large universe of documents is precisely why we believe that a meet and confer would be productive, as it would help both parties understand and target the specific types of documents that interest you and eliminate those that do not. For the reasons already stated in our recent letters, we cannot simply make a wholesale production of documents responsive to broad and unfocused search terms that do not make any meaningful effort to target relevant materials.

Please let us know when you are available for a meet and confer so that we can supplement our production with any additional relevant materials to you as quickly as possible.

Dave

**From:** Helen Chaitman [<mailto:hchaitman@chaitmanllp.com>]

**Sent:** Monday, October 23, 2017 3:02 PM

**To:** Sheehan, David J. <[dsheehan@bakerlaw.com](mailto:dsheehan@bakerlaw.com)>; Fein, Amanda E. <[afein@bakerlaw.com](mailto:afein@bakerlaw.com)>

**Cc:** Kratenstein, Andrew <[AKratenstein@mwe.com](mailto:AKratenstein@mwe.com)>; Peter Goldman ([PaGoldman45@gmail.com](mailto:PaGoldman45@gmail.com)) <[PaGoldman45@gmail.com](mailto:PaGoldman45@gmail.com)>

**Subject:** Documents from the BLMIS data base

Dave: You have suggested a meet-and-confer concerning the documents we have requested from the BLMIS data base. At this point, I think that would not be productive. Would you please produce, within five business days, all of the documents responsive to the search terms for Meadowbrook and Morgan Stanley? Since these are already in digitized format, this should not be burdensome for you. Once I see what documents are produced, I will be in a better position to meet-and-confer with you about the balance of the documents in the BLMIS data base that are responsive to our search terms.

Please produce these documents so that I have them within five business days. I will want to question Madoff about them and, given his health issues, any delay on your part may significantly impair our

ability to defend our clients. What we plan to do, given Madoff's health, is to question Madoff on the first day and have you cross Madoff on the second day. That way, there will be no basis to object to the admissibility of his testimony if he is unable, thereafter, to continue the deposition.

Helen Davis Chaitman  
Chaitman LLP  
465 Park Avenue  
New York, New York 10022  
[hchaitman@chaitmanllp.com](mailto:hchaitman@chaitmanllp.com)  
Cell: (908) 303-4568  
Fax: (888) 759-1114

**From:** Helen Chaitman [<mailto:hchaitman@chaitmanllp.com>]  
**Sent:** Thursday, November 02, 2017 10:56 AM  
**To:** Sheehan, David J.; Andrew B. Kratenstein ([akratenstein@mwe.com](mailto:akratenstein@mwe.com)) <[akratenstein@mwe.com](mailto:akratenstein@mwe.com)>  
**Cc:** Fein, Amanda E.; Peter Goldman ([PaGoldman45@gmail.com](mailto:PaGoldman45@gmail.com)) <[PaGoldman45@gmail.com](mailto:PaGoldman45@gmail.com)>  
**Subject:** RE: Documents from the BLMIS data base

Dave: If this was not clear before, let me be very clear now: I don't care about emails or similar documents at this point. I want to see the transaction confirmations and monthly statements from the financial institutions where there have been hits with the names we gave you. I assume you have some way of separating out the non-trade documents. I have always been very clear that I want to see all the trading records. Please let me know, before we meet, if the production of the documents with hits, containing only trading activity, is that burdensome for you to produce.

Helen Davis Chaitman  
Chaitman LLP  
465 Park Avenue  
New York, New York 10022  
[hchaitman@chaitmanllp.com](mailto:hchaitman@chaitmanllp.com)  
Cell: (908) 303-4568  
Fax: (888) 759-1114

**From:** Sheehan, David J. [<mailto:dsheehan@bakerlaw.com>]  
**Sent:** Monday, October 30, 2017 4:04 PM  
**To:** Helen Chaitman <[hchaitman@chaitmanllp.com](mailto:hchaitman@chaitmanllp.com)>; Andrew B. Kratenstein ([akratenstein@mwe.com](mailto:akratenstein@mwe.com)) <[akratenstein@mwe.com](mailto:akratenstein@mwe.com)>  
**Cc:** Fein, Amanda E. <[afein@bakerlaw.com](mailto:afein@bakerlaw.com)>; Peter Goldman ([PaGoldman45@gmail.com](mailto:PaGoldman45@gmail.com)) <[PaGoldman45@gmail.com](mailto:PaGoldman45@gmail.com)>  
**Subject:** FW: Documents from the BLMIS data base

Helen,

In our previous correspondence to you, we agreed to produce all documents that hit on the "Meadowbrook" search term given the relatively small universe of approximately 5,000 responsive documents that we have not already made available to you. However, consistent with the position we articulated in our letters, we objected to producing the more than 300,000 documents that hit on the "Morgan Stanley" search term without any further efforts on your part to target and narrow your search terms due to the fact that you already have 500,000 Morgan Stanley documents from which you could develop a more targeted search.

In accordance with our good faith efforts to compromise, we will produce to you approximately 9,000 documents that hit on the "Morgan Stanley" search term later this week. This production focuses on scanned hard-copy materials that were recovered from the Lipstick Building (including from the 17th floor, 18th floor, 19th floor, and basement) and offsite storage facilities, as well as data from BLMIS's primary data processing terminals, including the A/S 400. Given your primary interest in what you call "trading records," we believe that these materials are most likely to include the types of records you seek.

The remaining 290,000 documents that hit on the "Morgan Stanley" search term constitute BLMIS electronically stored information ("ESI"), which comprises emails and other electronic documents

recovered from BLMIS's network. For example, a broad search term like "Morgan Stanley" run across the BLMIS ESI results in approximately 153,000 emails alone, many of which are undoubtedly irrelevant. The search term hits also include Outlook contacts and appointments, JPEG files, and thousands of Word and Excel files. For these reasons, we maintain our objection to a wholesale production from BLMIS's ESI because any production is certain to include vast amounts of irrelevant documents. However, we remain happy to meet and confer with you in an effort to narrowly target any additional relevant information from this document population. Please let us know what dates work for you.

Dave

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**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION  
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT  
SECURITIES LLC,

Defendant.

Adv. Pro. No. 08-01789 (SMB)

SIPA Liquidation

(Substantively Consolidated)

In re:

BERNARD L. MADOFF,

Debtor.

IRVING H. PICARD, Trustee for the Liquidation of  
Bernard L. Madoff Investment Securities LLC,

Plaintiff,

v.

DEFENDANTS REPRESENTED BY CHAITMAN  
LLP,

Defendants.

Adv. Pro. Nos. (various cases)

**TRUSTEE IRVING H. PICARD'S RESPONSES AND OBJECTIONS TO  
DEFENDANTS' THIRD SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS  
TO THE TRUSTEE**

Irving H. Picard (the "Trustee"), as trustee for the liquidation of Bernard L. Madoff Investment Securities LLC ("BLMIS"), under the Securities Investor Protection Act, 15 U.S.C. §§ 78aaa-III ("SIPA"), and the estate of Bernard L. Madoff, by and through the Trustee's counsel, Baker & Hostetler LLP, hereby provides the following Responses and Objections



(“Responses”) to the Third Set of Requests for Production of Documents to the Trustee

(“Requests”) served by certain Defendants represented by Chaitman LLP (“Defendants”).<sup>1</sup>

### **OBJECTION TO DEFINITIONS**

1. The Trustee objects to the term “Document” in Definition 3 as inconsistent with Local Rule 26.3(c)(2) of the United States District Court for the Southern District of New York and this Court. The Trustee will respond to Requests containing “Document” as it is defined by Local Rules 26.3(c)(2) and Fed. R. Civ. P. 34(a)(1).

2. The Trustee objects to the terms “and” and “or” in Definition 9 as inconsistent with Local Rule 26.3(d) of the United States District Court for the Southern District of New York and this Court. The Trustee will respond to Requests containing these terms as they are defined by Local Rule 26.3(d).

### **OBJECTION TO INSTRUCTIONS**

1. The Trustee will respond to these Requests consistent with Rules 26 and 34 of the Federal Rules of Civil Procedure, Rules 7026 and 7034 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), applicable Local Civil Rules of the United States District Court for the Southern District of New York and this Court (the “Local Rules”), and any applicable orders of the Court, including the Court’s June 6, 2011 Litigation Protective Order [ECF No. 4137].

### **SOURCES OF INFORMATION RELEVANT TO THE CLAIMS OR DOCUMENTS IN THE TRUSTEE’S POSSESSION, CUSTODY OR CONTROL**

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<sup>1</sup> The Requests purport to be served on behalf of all defendants represented by Chaitman LLP. However, fact discovery is closed in three cases in which defendants have filed a motion to withdraw the reference currently pending before the district court (Adv. Pro. Nos. 10-04377, 10-04658, and 10-04898). The Trustee therefore objects to these Requests to the extent they purport to be served in connection with those cases, and these Responses should not be deemed to be served in connection with those cases. In addition, Baker & Hostetler LLP is not counsel to the Trustee in all adversary proceedings in which Chaitman LLP is counsel of record. As such, the Trustee serves these Responses only with respect to those cases in which Baker & Hostetler LLP is counsel to the Trustee.

1. Hard-copy documents from the offices of BLMIS, offsite storage used by BLMIS, and other locations (“Hard-Copy BLMIS Documents”).
2. Electronic documents obtained from among approximately 20,000 pieces of media from the offices of BLMIS, offsite storage used by BLMIS, and other locations (“BLMIS Electronic Documents” or “BLMIS ESI”).
3. Documents produced by third parties to the Trustee during his investigation or adversary proceedings (“Third-Party Documents”).

#### **I. BLMIS DOCUMENTS**

From the Hard-Copy BLMIS Documents and BLMIS ESI (collectively, “BLMIS Documents”), the Trustee created a searchable electronic database containing approximately 4.7 million Hard-Copy BLMIS Documents and 25 million BLMIS Electronic Documents (“the **BLMIS Searchable Database**”). Defendants do not have direct access to the BLMIS Searchable Database because it contains documents relating to thousands of customers, many of which are not relevant to this proceeding. Instead, the Trustee provides all Defendants in these proceedings with documents as described below:

**A. Proof of BLMIS’s Fraud and Insolvency:** The Trustee created E-Data Room 1 from documents in the BLMIS Searchable Database as well as some Third-Party Documents. E-Data Room 1 contains documents relevant to the issues of the fraud conducted at BLMIS and its insolvency, and includes documents relating to BLMIS operations, regulatory disclosures, and financial records. *See Appendix A* for a description of documents available to Defendants in E-Data Room 1.

**B. BLMIS Core Account Documents:** The Trustee identified and segregated BLMIS core account documents for all customers (“Core Account Documents”). These Core

Account Documents include account opening agreements, correspondence to and from BLMIS, transfer and/or redemption requests, customer statements, Portfolio Management and/or Portfolio Management Transaction Reports, which contain transaction history, and other documents that were specific to each account, and/or the Trustee's calculation of net equity of a particular BLMIS account.

**C. Proof of Transfers:** In addition to the Core Account Documents relevant to transfers described above, the Trustee identified and segregated BLMIS bank account records that reflect transfers to customers ("Bank Transfer Documents"). Collectively, the Core Account Documents and the Bank Transfer Documents represent the documents produced to the Defendants by the Trustee with his initial disclosures (the "Initial Disclosure Documents").

**D. Other Documents:** The Trustee preserved the nearly 20,000 pieces of BLMIS ESI and millions of pages of BLMIS Hard-Copy Documents in his possession, but did not include all such documents in the BLMIS Searchable Database. The Trustee did not process or scan, for example, backup tapes believed to contain redundant data, some floppy disks or CDs, and broken media. In responding to discovery requests, the Trustee typically does not search for BLMIS documents outside of the BLMIS Searchable Database. The Trustee will produce additional BLMIS Documents (meaning other than those described in Paragraphs A and B) from the BLMIS Searchable Database provided that the parties agree to narrowly tailored case-specific search terms and parameters that target documents relevant to the claims or defenses and proportional to the needs of the case in accordance with Federal Rule 26(b)(1). *See Appendix B* for a description of sources of documents in the BLMIS Searchable Database.

## II. THE SQL DATABASES

Information contained in certain BLMIS Hard-Copy Documents, BLMIS ESI, and certain Third-Party Documents was processed and input into multiple Microsoft Structured Query Language (“SQL”) Server tables and databases (the “SQL Databases”). To the extent feasible, the underlying documents used to build the SQL Databases are contained in E-Data Room 1. Some or all of the data in the SQL Databases is responsive to most of the Interrogatories. SQL Databases are used by the Trustee’s experts and are available for production to any Defendant upon request. Use of the SQL Databases requires some technical expertise. *See Appendix C* for the sources of data loaded into the SQL Databases.

### **THE TRUSTEE’S OBJECTIONS**

1. **Documents Not Proportional to the Needs of the Case:** The BLMIS Searchable Database may contain documents that are responsive to the Requests but which are redundant, cumulative, or marginally relevant. The Trustee objects to the production of these Documents to the extent that such production is not proportional to the needs of the case under Federal Rule 26(b)(1) (“Documents Not Proportional to the Needs of the Case”).

2. **Documents Outside the Scope of Relevance:** The Trustee objects to the production of any documents outside the scope of relevance articulated in Federal Rule 26 and Section 4(G) of the Litigation Procedures Order (“Documents Outside the Scope of Relevance”).

3. **Third-Party Documents Designated Confidential:** The Trustee objects to the production of any Third-Party Documents designated confidential pursuant to the June 6, 2011 Litigation Protective Order (“LPO”). *See* ECF No. 4137. To the extent the Trustee identifies any responsive Third-Party Documents designated confidential, the Trustee will notice the producing party pursuant to paragraph 12 of the LPO. The Trustee will not produce any responsive

documents over which the producing party maintains any confidentiality objections.

**RESPONSES TO DOCUMENT REQUESTS**

**REQUEST NO. 1:**

All records evidencing securities trades placed by or on behalf of Bernard L. Madoff or Bernard L. Madoff Investment Securities, LLC (“BLMIS”), or on behalf of customers of Bernard L. Madoff or BLMIS, with or by third parties, regardless of whether the records evidence “House 5” or “House 17” trading. These records would include, for example, transaction confirmation slips or monthly or quarterly statements from JPMorgan Chase, Bear Sterns, Fidelity, and any other third-party financial institutions.

**RESPONSE:**

The Trustee objects to this Request on the grounds that it calls for Documents Not Proportional to the Needs of the Case (Objection No. 1). Defendants’ request for “all records evidencing securities trades placed by or on behalf of Bernard L. Madoff or Bernard L. Madoff Investment Securities, LLC” potentially implicates millions of documents in the Trustee’s possession, custody, or control—many of which are redundant, cumulative, or marginally relevant.

The Trustee further objects to this Request on the grounds that it calls for Documents Outside the Scope of Relevance (Objection No. 2). “All records evidencing securities trades”

placed by or on behalf of BLMIS or Madoff includes documents that are not relevant to the claims and defenses in these adversary proceedings.

The Trustee further objects to this Request to the extent that it calls for Third-Party Documents Designated Confidential (Objection No. 3). The Trustee will treat all records designated confidential in accordance with the LPO.

Documents responsive to this Request are already available in the “FINANCIALS” folder of E-Data Room 1, which contains certain Third-Party Documents organized by financial institution. Consistent with the agreements reached with opposing counsel at the November 14, 2017 meet and confer, the Trustee will search for and review additional potentially responsive records from the universe of Third-Party Documents. To the extent the Trustee identifies any additional responsive records that are not already in E-Data Room 1 or otherwise already available to Defendants, the Trustee will produce such records on a rolling basis within four to six weeks, subject to any confidentiality objections maintained by any third party.

**REQUEST NO. 2:**

All account opening documents and modifications thereof relating to the account in the name of Bernard L. Madoff or BLMIS with account number ending in “509” at JPMorgan Chase.

**RESPONSE:**

The Trustee objects to this Request on the grounds that it calls for Documents Outside the Scope of Relevance (Objection No. 2).

The Trustee further objects to this Request to the extent that it calls for Third-Party Documents Designated Confidential (Objection No. 3). The Trustee will treat all records designated confidential in accordance with the LPO.

The Trustee further objects to the phrase “modifications thereof” as vague and ambiguous. The Trustee will interpret this Request as seeking account-opening documents for the BLMIS account number ending in “509” held at JPMorgan Chase.

Consistent with the agreements reached with opposing counsel at the November 14, 2017 meet and confer, the Trustee will search for and review additional potentially responsive records among the Third-Party Documents. To the extent the Trustee identifies any responsive records, the Trustee will produce them on a rolling basis within four to six weeks, subject to any confidentiality objections maintained by any third party.

**REQUEST NO. 3:**

All monthly statements from third-party financial institutions relating to securities held in custody on behalf of Bernard L. Madoff, BLMIS, or customers of Bernard L. Madoff or BLMIS.

**RESPONSE:**

The Trustee objects to this Request to the extent that it calls for Third-Party Documents Designated Confidential (Objection No. 3). The Trustee will treat all records designated confidential in accordance with the LPO.

Documents responsive to this Request are available in the “FINANCIALS” folder of E-Data Room 1, which contains certain Third-Party Documents organized by financial institution. Consistent with the agreements reached with opposing counsel at the November 14, 2017 meet and confer, the Trustee will search for and review additional potentially responsive records from the universe of Third-Party Documents. To the extent the Trustee identifies any additional responsive records that are not already in E-Data Room 1 or otherwise already available to

Defendants, the Trustee will produce such records on a rolling basis within four to six weeks,  
subject to any confidentiality objections maintained by any third party.

**BAKER & HOSTETLER LLP**

Dated: December 21, 2017  
New York, New York

By: /s/ David J. Sheehan

David J. Sheehan  
Email: dsheehan@bakerlaw.com  
Nicholas J. Cremona  
Email: ncremona@bakerlaw.com  
Maximillian S. Shifrin  
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**BAKER & HOSTETLER LLP**  
45 Rockefeller Plaza  
New York, New York 10111  
Telephone: 212.589.4200  
Fax: 212.589.4201

*Attorneys for Irving H. Picard,  
Trustee for the Substantively  
Consolidated SIPA Liquidation of  
Bernard L. Madoff Investment Securities  
LLC and the Estate of Bernard L. Madoff*



**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing was served this 21st day of  
December, 2017 by electronic and first class mail upon the following:

CHAITMAN LLP  
Helen Davis Chaitman  
465 Park Avenue  
New York, NY 10022  
Email: hchaitman@chaitmanllp.com

/s/ Maximillian S. Shifrin  
*An Attorney for Irving H. Picard, Trustee  
for the Substantively Consolidated SIPA  
Liquidation of Bernard L. Madoff Investment  
Securities LLC and the Estate of Bernard L.  
Madoff*

1 UNITED STATES BANKRUPTCY COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 Lead Case No. 08-99000-smb

4 Case No. 08-01789 (SMB)

5 Adv. Case No. 10-04995 (SMB)

6 - - - - - x

7 SECURITIES INVESTOR PROTECTION

8 CORPORATION,

9 Plaintiff-Applicant,

10 v.

11 BERNARD L. MADOFF INVESTMENT

12 SECURITIES LLC,

13 Defendants.

14

15 - - - - - x

16 In re:

17 BERNARD L. MADOFF,

18 Debtor.

19 - - - - - x

20 IRVING H. PICARD, Trustee

21 for the Liquidation of Bernard L. Madoff

22 Investment Securities LLC,

23

24 Plaintiff,

25 v.

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TRUST U/ART FOURTH O/W/O  
ISRAEL WILENITZ,  
EVELYN BEREZIN WILENITZ,  
individually, and as Trustee  
and Beneficiary of the Trust  
U/ART Fourth O/W/O Israel  
Wilenitz, and  
  
SARA SEIMS, as Trustee of  
the Trust U/ART Fourth O/W/O  
Israel Wilenitz,  
  
Defendants.

- - - - - x

United States Bankruptcy Court  
One Bowling Green  
New York, NY 10004

May 1, 2018  
10:02 AM

1 B E F O R E :

2 HON STUART M. BERNSTEIN

3 U.S. BANKRUPTCY JUDGE

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5 ECRO: JONATHAN

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1 HEARING re Discovery Conference

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25 Transcribed by: Sonya Ledanski Hyde

1 A P P E A R A N C E S :

2

3 CHAITMAN LLP

4 Attorney for Defendants

5 465 Park Avenue

6 New York, NY 10022

7

8 BY: HELEN DAVIS CHAITMAN

9

10 BAKERHOSTETLER

11 Attorneys for Trustee

12 45 Rockefeller Plaza

13 New York, NY 10111-0100

14

15 BY: NICHOLAS J. CREMONA

16 MAXIMILLIAN S. SHIFRIN

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1 P R O C E E D I N G S

2 CLERK: Please be seated.

3 THE COURT: Good morning. Madoff?

4 MS. CHAITMAN: Good morning, Your Honor.

5 THE COURT: Good morning.

6 MS. CHAITMAN: This is my request for a conference  
7 with respect to discovery motion.

8 THE COURT: Okay, go ahead.

9 MS. CHAITMAN: Do you want to hear argument on it?

10 THE COURT: Well, I've read the papers. And I  
11 guess I didn't realize it before, maybe I did, that Judge  
12 Moss had set up a procedure to narrow the issues and narrow  
13 the dispute. And part of that required the parties to meet  
14 and confer, which you apparently did, and then to write a  
15 letter to Judge Moss identifying the sources of what's still  
16 left, what's the disagreement. And I didn't see that  
17 letter.

18 MS. CHAITMAN: Right, because then I -- we filed a  
19 motion before this Court, which was heard last -- I filed it  
20 in June. It was argued on two different days in July. And  
21 at that point, I think it was at that point that Your Honor  
22 said that I should file -- I could file a motion.

23 THE COURT: Well, yeah, I can't tell you not -- I  
24 can't tell you you can't file a motion for sanctions. All  
25 I'm saying, and I wasn't aware of the letter, but all I'm

1 saying is, if you filed that motion and there was a  
2 procedure in place and it wasn't followed, you're probably  
3 going to lose that motion and that could open you up to  
4 costs and attorneys' fees. That's all I'm saying.

5 MS. CHAITMAN: So you want me to go back to the  
6 Magistrate Judge Moss at this point? Because so much has  
7 happened since then.

8 THE COURT: Well, but that's the problem. This  
9 keeps expanding, rather than getting narrower. I'm not --  
10 all I'm saying is there was a procedure in place.

11 MS. CHAITMAN: Right.

12 THE COURT: Which was obviously intended to narrow  
13 the issues, and it looks like that procedure wasn't  
14 followed.

15 MS. CHAITMAN: Well, it wasn't followed in the  
16 sense that I didn't go back to Magistrate Judge Moss. I did  
17 come to this Court. The papers did disclose the whole  
18 history with Magistrate Judge Moss. The Trustee laid that  
19 all out for you. You then said I could file a motion.

20 THE COURT: Yes.

21 MS. CHAITMAN: I then tried for six months to get  
22 the Trustee to produce the documents. So we're now at a  
23 point where it's been two years since you ordered the  
24 Trustee to produce the trading records.

25 THE COURT: But part of, part of what Judge Moss



1 required was for you to identify your basis of your belief  
2 that certain information was in some of these documents.

3 MS. CHAITMAN: There's no dispute that this --  
4 I've been asking for the trading records for two years.  
5 There's no dispute that the Trustee has the trading records.  
6 The Trustee has what he calls the BLMIS database, which he's  
7 never given Defendants access to.

8 THE COURT: I thought you were -- isn't that in  
9 the data room? I thought you were always --

10 MS. CHAITMAN: No, no, no, no, there are two  
11 different areas. In the e-data room is the documents the  
12 Trustee wanted the Defendants to see. In the BLMIS  
13 database, which is a much more massive database, are the  
14 documents that the Trustee refuses to give the Defendants  
15 access to.

16 THE COURT: But I thought the issue, though, was  
17 that there were documents that the Trustee had made a  
18 determination that it just wasn't worth it to digitize them  
19 or whatever.

20 MS. CHAITMAN: Those were microfiche records.

21 THE COURT: Right.

22 MS. CHAITMAN: Those are reels. It came out last  
23 spring that there were I think 5000 microfiche reels that  
24 the Trustee had not disclosed. Your Honor then said that we  
25 would have the burden; we could get 20 of those.

1 THE COURT: I suggested designating and showing me  
2 what's missing.

3 MS. CHAITMAN: Right, right.

4 THE COURT: But what's relevant and wasn't  
5 produced.

6 MS. CHAITMAN: Right. So as to that, there are  
7 three categories of documents: the e-data room, which the  
8 Trustee always represented to you contained every trading  
9 record that anyone could possibly ask for; there's the BLMIS  
10 database, which is the largest volume of documents; and then  
11 there are these reels. What happened with the reels --

12 THE COURT: Well, the database, though. Is that  
13 stuff that's been digitized, and you can go in?

14 MS. CHAITMAN: It's digitized and searchable, but  
15 the Trustee doesn't allow the Defendants counsel to look.

16 THE COURT: Okay.

17 MS. CHAITMAN: Okay. So then the third category  
18 is these reels. What Your Honor suggested is that we could  
19 look at 20 reels, and then after that, we'd have to pay for  
20 the cost. We don't have the ability to pay.

21 THE COURT: Well, I thought -- I don't mean to  
22 interrupt. But I thought I said take a look at these 20,  
23 select any 20 you want.

24 MS. CHAITMAN: Right.

25 THE COURT: Take a look at them. And if there's

1 something in there that you convince me is relevant and  
2 hasn't been turned over, then we'll talk about the next  
3 step.

4 MS. CHAITMAN: Okay. So what happened was, we  
5 chose four reels; they didn't have anything relevant. And I  
6 thought that that was not a productive way to go and it was  
7 much more productive for us to focus on the trading records  
8 for the entire time that Madoff operated, which I understand  
9 are in the BLMIS database.

10 THE COURT: Okay, I got it. All right.

11 MR. SHIFRIN: Good morning, Your Honor. Max  
12 Shifrin on behalf of the Trustee. Unfortunately, there's a  
13 lot to clarify there.

14 I'd like to state at the outset that your focus on  
15 -- that Your Honor's focus on Judge Moss' March 2017 Order  
16 is exactly accurate. And that is the Order that Ms.  
17 Chaitman has, for the better of the last year, ignored  
18 entirely. And the motion that she is referencing from June  
19 of last year itself was a violation of that Order.

20 THE COURT: Okay.

21 MR. SHIFRIN: That motion that she's referring to,  
22 it's actually -- it was the briefing on the day two Madoff  
23 deposition documents.

24 THE COURT: Yeah. You know what? I think  
25 generally that these issues from before Judge Moss, but I

1 don't think I focused on that Order back last July.

2 MR. SHIFRIN: Right, and I think part of that was  
3 probably our failure fully educating the Court. But as we  
4 made that clear, Your Honor, I think, came around to that.  
5 And that Order is the Order that Ms. Chaitman has been  
6 ignoring for, like I said, for the past year.

7 That Order required her to meet and confer with us  
8 in good faith; to use the indices that we provided to her,  
9 which are comprehensive indices providing itemization of the  
10 BLMIS data in our possession; to use those indices to  
11 specifically state what she wants and where it's located.

12 THE COURT: Okay. We're just talking about the  
13 BLMIS data room, as I understand it now.

14 MR. SHIFRIN: Well, this is the other thing I  
15 think we need to clarify, Your Honor.

16 THE COURT: Okay.

17 MR. SHIFRIN: E-data room 1, let's start with  
18 that. This is something that Miss Chaitman has inaccurately  
19 characterized for the last couple of years, stating that we  
20 represented that it was the ultimate repository of all  
21 relevant information.

22 We have never held it out as data. E-data room 1  
23 is the vehicle through which we produced the documents that  
24 our experts considered in connection with their global  
25 reports. They're affectively our Rule 26 disclosures and

1 productions. We never said that it includes all relevant  
2 information.

3 THE COURT: Okay.

4 MR. SHIFRIN: That was never -- and we were very  
5 clear about that is in our initial disclosures going back to  
6 2011, and we state this in our letter. We were very clear  
7 about this in our responses to Ms. Chaitman's discovery  
8 requests. We were very clear about this in our multiple  
9 letters to her and to the Court and to -- and in connection  
10 with various briefing.

11 We have been clear about this all the time. What  
12 Miss Chaitman has been doing is cherry-picking certain  
13 statements, taking them out of context.

14 THE COURT: Is there -- what's -- so she's  
15 referred to this BLMIS database.

16 MR. SHIFRIN: Right.

17 THE COURT: That's not the data room you just  
18 described.

19 MR. SHIFRIN: No.

20 THE COURT: Is there such a database?

21 MR. SHIFRIN: It is. The BLMIS database is a  
22 repository of about 30 million processed documents. So when  
23 the Trustee took possession of all of the BLMIS data, it was  
24 considerably larger than 30 million documents. We have no  
25 idea what those documents -- how many documents we actually

1 have.

2 THE COURT: And those are the 4700 hard copies and  
3 microfilm?

4 MR. SHIFRIN: Right. That it was the microfilm:  
5 that includes 20,000 pieces of media; that includes  
6 approximately 10,000 boxes of hard copy documents. And from  
7 that ultimate and enormous collection of data, we process 30  
8 million documents into a BLMIS database.

9 THE COURT: Has that information -- have those  
10 documents been available for inspection by Defendants?

11 MR. SHIFRIN: Those documents -- or I should say,  
12 the boxes of hard copy documents and the media.

13 THE COURT: That's different. She's had -- she's  
14 been offered the opportunity to look at the hard, the hard  
15 copies and the microfiche. She looked at four reels and she  
16 said it wasn't a productive use of time.

17 MR. SHIFRIN: Right.

18 THE COURT: She's also telling me that there is a  
19 universe of what I'll call processed documents --

20 MR. SHIFRIN: Right.

21 THE COURT: -- in the sense they've been digitized  
22 and they're searchable that has not been made available, a  
23 key word search or whatever. That's my understanding of  
24 what you're saying.

25 MR. SHIFRIN: That's false. Whenever we run

1 search terms --

2 THE COURT: I don't mean to put words in your  
3 mouth, but that was my understanding that this was not made  
4 available.

5 MS. CHAITMAN: No, no, no, that we've never been  
6 given access to that database.

7 MR. SHIFRIN: We, the productions that we detail  
8 in our letter, Your Honor, the search terms that we said  
9 we'd run have been across the BLMIS database, the 30 million  
10 records in the BLMIS database.

11 THE COURT: All right.

12 MR. SHIFRIN: So she has access, but she has to  
13 give us search terms, reasonable search terms.

14 THE COURT: Of which she gave a couple. You had  
15 147 and she had some more.

16 MR. SHIFRIN: Yeah, we ran those. That's correct.  
17 We ran 147 search terms across the BLMIS database, produced  
18 all documents responsive to those.

19 THE COURT: Okay.

20 MR. SHIFRIN: Then she offered 22 much broader  
21 search terms that were based on bank names like Fidelity and  
22 Morgan Stanley. Those documents yielded a universe of 3  
23 million documents, which we objected to, I think quite  
24 sensibly, on Rule 26 grounds and on the grounds that it  
25 violated Judge Moss' Order.

1 We tried to meet and confer with her over several  
2 months and narrow those requests and we were successful.  
3 And we had what I thought was successful meet and confer  
4 November of 2014 where we focused -- rather, instead of the  
5 BLMIS database, we focused on third-party documents that  
6 were produced in response to Rule 2004 subpoenas that the  
7 Trustee has served; given that Miss Chaitman was very clear  
8 for the first time that she was only looking for third-party  
9 customer statements and the like, rather than a wholesale  
10 production of 3 million documents responsive to broad search  
11 terms.

12 We ran those search terms. We followed the  
13 protocols as we said we would. We produced those documents.  
14 And Miss Chaitman currently has all the documents that we  
15 agreed we would produce pursuant to the search protocols  
16 that we agreed to run. So as far as we're concerned,  
17 there's just no dispute here anymore.

18 THE COURT: Well, there's obviously a dispute.

19 MR. SHIFRIN: There is, that's correct.

20 THE COURT: All right.

21 MR. SHIFRIN: We've done everything we said we  
22 would and we've done everything that Miss Chaitman asked us  
23 to.

24 THE COURT: In reference to the conference, Miss  
25 Chaitman, as I said, if there was a procedure in place and



1 it wasn't followed, there's a good chance you won't win your  
2 motion, which may subject you to costs and attorneys' fees.  
3 I think that maybe you ought to follow the procedures with  
4 Judge Moss that were set up.

5 You know, some of this is, maybe it's just the  
6 nature of the dispute. It's being litigated in two  
7 different places, and I feel like I'm getting whipsawed  
8 here.

9 MS. CHAITMAN: May I just say one thing, Your  
10 Honor?

11 THE COURT: Sure. He's saying he produced it;  
12 you're saying he didn't.

13 MS. CHAITMAN: Yeah, but there's a little game  
14 being played here, and I'd like to lay it out. Our position  
15 is that Madoff actually did purchase securities.

16 THE COURT: I know what your position is.

17 MS. CHAITMAN: Okay.

18 THE COURT: I'm not arguing with you over your  
19 position.

20 MS. CHAITMAN: Okay.

21 THE COURT: This is a discovery dispute though.

22 MS. CHAITMAN: Okay. What I'm interested in is  
23 the third-party trading; in other words, accounts that  
24 Madoff had at every financial institutions in the world.  
25 Okay? I want the monthly statements from those

1 institutions, so they can't -- you can't challenge the  
2 credibility of the documents, to show what securities  
3 positions Madoff held. And then I'm going to match those  
4 positions to customer statements.

5 THE COURT: Okay.

6 MS. CHAITMAN: Now, what you just heard was that  
7 the Trustee didn't search the BLMIS database, except for  
8 documents that the Trustee had subpoenaed from these third-  
9 party institutions. The third-party institutions --

10 THE COURT: That's not my understanding of what he  
11 said.

12 MS. CHAITMAN: But that's what he just said.  
13 Isn't it a fact -- did you give me only the documents that  
14 the Trustee subpoenaed from third-party institutions?

15 MR. SHIFRIN: We, that's exactly what we agreed to  
16 at our meet and confer.

17 THE COURT: All right.

18 MR. SHIFRIN: That we would search the Rule 2004  
19 documents. If Miss Chaitman wants us to search any --

20 THE COURT: I thought you said you did the search  
21 with the key searches on this BLMIS database.

22 MR. SHIFRIN: With respect to the recent  
23 production, we ran account numbers only in the -- among the  
24 Rule 2004 documents because that's what specifically we  
25 agreed to at the meet and confer.

1 MS. CHAITMAN: Let me explain what's wrong with  
2 that, Judge.

3 THE COURT: Right.

4 MS. CHAITMAN: Financial institutions don't keep  
5 records going back that far. Madoff kept the records. He  
6 kept Bear Sterns statements going back 20 years. That's  
7 what I'd asked for, and instead, I got a bunch of garbage.

8 MR. SHIFRIN: Your Honor, this is the problem.  
9 What Miss Chaitman does is she runs to the Court, instead of  
10 gives us a call or sends us an email.

11 THE COURT: Well --

12 MR. SHIFRIN: If she wants us to run additional  
13 searches that are reasonable, we're happy to do it.

14 THE COURT: Yeah, I think you know that part of  
15 this is not just relevance, Miss Chaitman; it's  
16 proportionality. But, as I said, I won't stop you from  
17 making a motion.

18 But it sounds to me like Judge Moss has dealt with  
19 this issue, he's established a procedure and that procedure  
20 should be followed.

21 MS. CHAITMAN: Okay, then I'll go back to Judge  
22 Moss then.

23 THE COURT: All right. But you got to write him a  
24 letter. You know, you got to follow that procedure --

25 MS. CHAITMAN: Right.

1 THE COURT: -- that was in that Order.

2 MS. CHAITMAN: Right.

3 THE COURT: All right.

4 MS. CHAITMAN: Okay.

5 THE COURT: Thank you very much.

6 MR. SHIFRIN: Thank you, Your Honor.

7 (Whereupon these proceedings were concluded at 10:15 AM)

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C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing  
transcript is a true and accurate record of the proceedings.

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Ledanski Hyde

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**From:** Helen Chaitman <[hchaitman@chaitmanllp.com](mailto:hchaitman@chaitmanllp.com)>  
**Sent:** Tuesday, May 01, 2018 5:54 PM  
**To:** Shifrin, Maximillian S. <[mshifrin@bakerlaw.com](mailto:mshifrin@bakerlaw.com)>  
**Subject:** RE: Wilenitz Conference Follow-Up

**When we had our meet and confer and when we exchanged emails thereafter, you never indicated that you would (and I never said that I wanted you to) limit your production to documents you obtained through 2004 subpoenas. That limitation never was discussed and I would never have agreed to that.**

**There is no reason to repeat the search you have already done. We had agreed that you would produce from the BLMIS data base all documents from third parties indicating trades done by Madoff and BLMIS without time limitation. I am entitled to all of those records and you should simply give me access to the BLMIS data base so that I can do my own searches. Why are you continuing to conceal these documents?**

Helen Davis Chaitman  
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**From:** Shifrin, Maximillian S. [<mailto:mshifrin@bakerlaw.com>]  
**Sent:** Tuesday, May 01, 2018 1:35 PM  
**To:** Helen Chaitman <[hchaitman@chaitmanllp.com](mailto:hchaitman@chaitmanllp.com)>  
**Subject:** Wilenitz Conference Follow-Up

Helen,

At the hearing this morning, you appeared to object to our recent production on the grounds that it did not include documents from the BLMIS Database. As we agreed at the November 14, 2017 meet and confer, and as we confirmed in our responses and objections to your discovery requests, the Trustee applied the agreed-upon search terms across the Rule 2004 materials in the Trustee's possession.

However, we have no objection to running the same search terms across the BLMIS Database and producing any documents responsive to the search terms to the extent they have not already been made available to you. In an effort to proactively resolve this dispute, we will begin this process and provide an update once our review is complete.

If you have any questions, please feel free to reach out to me directly.

Best,  
Max

**Maximillian S. Shifrin**  
Associate

**BakerHostetler**

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[mshifrin@bakerlaw.com](mailto:mshifrin@bakerlaw.com)  
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**From:** Shifrin, Maximillian S.  
**Sent:** Thursday, May 10, 2018 12:40 PM  
**To:** Helen Chaitman <[hchaitman@chaitmanllp.com](mailto:hchaitman@chaitmanllp.com)>  
**Subject:** RE: Status

Helen,

Please see the attached revised list of search terms with corresponding financial institution.

Max

**From:** Helen Chaitman <[hchaitman@chaitmanllp.com](mailto:hchaitman@chaitmanllp.com)>  
**Sent:** Wednesday, May 09, 2018 7:46 PM  
**To:** Shifrin, Maximillian S. <[mshifrin@bakerlaw.com](mailto:mshifrin@bakerlaw.com)>  
**Subject:** RE: Status

Max: Can you give me the names of the institutions each account number relates to?

Helen Davis Chaitman  
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Fax: (888) 759-1114

**From:** Shifrin, Maximillian S. [<mailto:mshifrin@bakerlaw.com>]  
**Sent:** Wednesday, May 09, 2018 2:13 PM  
**To:** Helen Chaitman <[hchaitman@chaitmanllp.com](mailto:hchaitman@chaitmanllp.com)>  
**Subject:** RE: Status

Helen,

Attached are the search terms we are running. They are the exact same search terms we ran in connection with our previous production.

Once we run the search, we will isolate the documents that we have not previously produced to you or made available in E-Data Room 1 and review them. We will not limit the search in any other way, including by date.

After we review the materials, we will produce the documents to you on a hard drive, as we have previously done. Unless you have any objection, the production will include all documents responsive to the search terms (excluding documents already available to you) in order to ensure that you have everything that may be of interest.

Best,  
Max

**From:** Helen Chaitman <[hchaitman@chaitmanllp.com](mailto:hchaitman@chaitmanllp.com)>  
**Sent:** Tuesday, May 08, 2018 12:53 PM  
**To:** Shifrin, Maximillian S. <[mshifrin@bakerlaw.com](mailto:mshifrin@bakerlaw.com)>  
**Subject:** RE: Status

Can you please email me the search terms you are going to use, just so that there is no misunderstanding.

Also, just to be clear, you are not limiting the search by date, correct?

And once you complete the search, will you make all of the responsive documents accessible in the E-Data room?

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Fax: (888) 759-1114

**From:** Shifrin, Maximillian S. [<mailto:mshifrin@bakerlaw.com>]  
**Sent:** Tuesday, May 08, 2018 11:52 AM  
**To:** Helen Chaitman <[hchaitman@chaitmanllp.com](mailto:hchaitman@chaitmanllp.com)>  
**Subject:** RE: Status

Helen,

As we proposed last week, we will run the same search terms across the BLMIS Database and provide an update once our review is complete. If you have any additional search terms you would like us to run, please let me know. Also, to the extent we identify any additional responsive documents in the course of our ongoing investigation, we will produce those to you as well.

We trust these measures are acceptable to you. If not, we can continue the discussion before Judge Maas.

Best,  
Max

**From:** Helen Chaitman <[hchaitman@chaitmanllp.com](mailto:hchaitman@chaitmanllp.com)>  
**Sent:** Monday, May 07, 2018 3:23 PM  
**To:** Shifrin, Maximillian S. <[mshifrin@bakerlaw.com](mailto:mshifrin@bakerlaw.com)>  
**Subject:** RE: Status

Max: "Third party records" meant non-Madoff documents. I made this absolutely clear in our meeting. No where did you or anyone else say you would only search among records that Picard had subpoenaed. Obviously, financial institutions don't keep records going back more than six years so that body of documents is obviously very limited.

I am asking you now to provide me with access to all documents which were generated by third parties reflecting any trading activity of Madoff and/or BLMIS without date limitation. This request is inclusive of all documents that had been in Madoff's and BLMIS' possession or control prior to 12/11/08.

If this is unclear, please let me know. Also, please give me a date by which this production will be made.

Helen Davis Chaitman  
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New York, New York 10022  
[hchaitman@chaitmanllp.com](mailto:hchaitman@chaitmanllp.com)  
Cell: (908) 303-4568  
Fax: (888) 759-1114

**From:** Shifrin, Maximillian S. [<mailto:mshifrin@bakerlaw.com>]  
**Sent:** Monday, May 07, 2018 2:35 PM  
**To:** Helen Chaitman <[hchaitman@chaitmanllp.com](mailto:hchaitman@chaitmanllp.com)>  
**Subject:** RE: Status

Helen,

Attached are four items that support our understanding of the agreements reached during the meet and confer. They include the following:

1. An email I sent to you on November 15, 2017—the day after our meet and confer—confirming that we will run the “search terms across our third party records”;
2. The Trustee's December 21, 2017 responses and objections to your subsequent discovery requests, which states (three separate times): “Consistent with the agreements reached with opposing counsel at the November 14, 2017 meet and confer, the Trustee will search for and review additional potentially responsive records from the universe of Third-Party Documents.”;
3. A January 2, 2018 email again confirming that we were running “searches in our Third Party Documents,” as we had stated in our discovery responses; and
4. A March 16, 2018 email informing you that we had “identified documents from the third-party database responsive to the agreed-upon search terms based upon BLMIS bank account numbers.”

As you can see, we have been entirely consistent and transparent about what we agreed to do. In contrast, you did not raise any issue with our search protocols until the hearing last week.

In any event, we don't understand what the dispute is here. We have agreed to run the search you are complaining we didn't run. And we would have happily run that search originally if we were not under the impression that you wanted to focus on the Trustee's third-party records. Our goal was to give you exactly what you wanted.

Hopefully we can sort this out and avoid needlessly involving Judge Maas.

Best,  
Max

**From:** Helen Chaitman <[hchaitman@chaitmanllp.com](mailto:hchaitman@chaitmanllp.com)>  
**Sent:** Monday, May 07, 2018 11:42 AM  
**To:** Shifrin, Maximillian S. <[mshifrin@bakerlaw.com](mailto:mshifrin@bakerlaw.com)>  
**Subject:** RE: Status

Max: Please email to me any communication between us which supports your contention, made before Judge Bernstein, that I limited my request to third party records subpoenaed by Picard.

Helen Davis Chaitman  
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[hchaitman@chaitmanllp.com](mailto:hchaitman@chaitmanllp.com)  
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**From:** Shifrin, Maximillian S. [<mailto:mshifrin@bakerlaw.com>]  
**Sent:** Monday, May 07, 2018 11:25 AM  
**To:** Helen Chaitman <[hchaitman@chaitmanllp.com](mailto:hchaitman@chaitmanllp.com)>  
**Subject:** RE: Status

Helen,

As the Court recognized at the May 1, 2018 conference, Judge Maas's March 15, 2017 order continues to govern your request for additional documents. In addition to setting forth a specific procedure for raising additional disputes (which you have repeatedly disregarded), that order requires you to use the comprehensive indices we provided and to state with specificity the documents that you seek and where you believe they may be located. To date, you have not given us any indication that you've ever consulted these indices, much less used them to make an informed request for documents.

Despite your refusal to comply with this order, we remain happy to run reasonable search terms in the BLMIS Database in an effort to identify relevant documents that are of interest to you. Indeed, we've done this for you multiple times since the initial arbitration before Judge Maas, and have produced to you over 200,000 documents from the BLMIS Database using this approach. Most recently, after you complained to Judge Bernstein that our March 23, 2018 production focused exclusively on the Trustee's Rule 2004 materials (which was precisely what we agreed to do during our meet and confer), we offered to run that exact same search across the BLMIS Database in order to ensure that we provided you with everything of interest. Inexplicably, you declined this offer—despite complaining in court hours earlier that we did not take this precise step—and are now demanding an effective production of 30 million documents without regard to relevance, proportionality, or cost.



At this point, we are simply perplexed by your approach. You seem to have more interest in perpetuating disputes than in working with us to obtain the documents that you seek. Should your approach change, we will remain happy to work with you. But under these circumstances, we do not agree to a wholesale production of 30 million documents.

Best,  
Max

**From:** Helen Chaitman <[hchaitman@chaitmanllp.com](mailto:hchaitman@chaitmanllp.com)>  
**Sent:** Sunday, May 06, 2018 3:01 AM  
**To:** Shifrin, Maximillian S. <[mshifrin@bakerlaw.com](mailto:mshifrin@bakerlaw.com)>  
**Subject:** Status

Max: Please let me know by Monday at 5 p.m. if the Trustee is going to voluntarily give my clients access to the BLMIS data base.

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**From:** Helen Chaitman <[hchaitman@chaitmanllp.com](mailto:hchaitman@chaitmanllp.com)>  
**Sent:** Wednesday, September 05, 2018 3:04 PM  
**To:** Cremona, Nicholas J. <[ncremona@bakerlaw.com](mailto:ncremona@bakerlaw.com)>  
**Cc:** Greg Dexter <[gdexter@chaitmanllp.com](mailto:gdexter@chaitmanllp.com)>  
**Subject:** RE: Draft Joint Letter to Judge Maas

While normally I would always accept an invitation for a meet and confer, I cannot do so in this instance. We have had two years of such opportunities and they have still not resulted in the Trustee's compliance with two court orders. Moreover, Judge Bernstein has rejected your proposal to take the discovery you describe below and it is time-barred under all of the case management orders entered in the cases I am defending.

Please let me know whether you want to add to our proposed letter to Magistrate Judge Maas. If not, we will send it to Judge Maas as is, with a copy of this email exchange.

Helen Davis Chaitman  
Chaitman LLP  
465 Park Avenue  
New York, New York 10022  
[hchaitman@chaitmanllp.com](mailto:hchaitman@chaitmanllp.com)  
Cell: (908) 303-4568  
Fax: (888) 759-1114

**From:** Cremona, Nicholas J. [<mailto:ncremona@bakerlaw.com>]  
**Sent:** Wednesday, September 05, 2018 3:08 PM  
**To:** Helen Chaitman <[hchaitman@chaitmanllp.com](mailto:hchaitman@chaitmanllp.com)>  
**Subject:** FW: Draft Joint Letter to Judge Maas

Helen,

I am resending the below email since I received an error message that it was undeliverable. Hopefully it comes through this time.

**Nicholas J. Cremona**  
Partner  
**BakerHostetler**  
45 Rockefeller Plaza  
New York, NY 10111-0100  
T +1.212.589.4682

[ncremona@bakerlaw.com](mailto:ncremona@bakerlaw.com)  
[bakerlaw.com](http://bakerlaw.com)



**From:** Cremona, Nicholas J.

**Sent:** Wednesday, September 05, 2018 2:52 PM

**To:** [IMCEAEX-](#)

[O=BECKER+20AND+20POLIAKOFF OU=First+20Administrative+20Group cn=Recipients cn=hchaitman@48hosting8.local; 'gdexter@chaitmanllp.com' <\[gdexter@chaitmanllp.com\]\(mailto:gdexter@chaitmanllp.com\)>](#)

**Cc:** Shifrin, Maximillian S. <[mshifrin@bakerlaw.com](mailto:mshifrin@bakerlaw.com)>; Sheehan, David J. <[dsheehan@bakerlaw.com](mailto:dsheehan@bakerlaw.com)>

**Subject:** RE: Draft Joint Letter to Judge Maas

Helen and Greg,

We write in response to your below request for the Trustee's position in connection with your proposed submission to Judge Maas. For the reasons set forth in this email, we suggest a meet and confer to discuss these and other open issues in lieu of further proceedings before Judge Maas in the first instance. The Trustee is evaluating a motion to seek additional limited discovery from defendants as contemplated in the Madoff Deposition Orders governing the participating cases, which includes the majority of your cases. In particular, the proposed motion contemplates additional depositions of former BLMIS employees, additional related document production and supplementation of the Trustee's expert disclosures and/or providing additional expert reports. Given the potential overlap between your discovery requests and the discovery contemplated by the Trustee's prospective motion, we believe it would be productive to discuss the issues in your proposed submission as well as the Trustee's motion to see whether we can reach agreement on the scope and timing of the additional discovery and document production, which would include continuing our discussion of the BLMIS Database.

Based on the foregoing, please let us know whether you are amenable to having a meeting next week to discuss these issues and deferring your submission to Judge Maas in the meantime.

We are generally available next week.

Please let us know how your clients would like to proceed.

Thank you.

**Nicholas J. Cremona**

Partner

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Begin forwarded message:

**From:** Greg Dexter <[gdexter@chaitmanllp.com](mailto:gdexter@chaitmanllp.com)>

**Date:** September 4, 2018 at 5:52:10 PM EDT

To: "Shifrin, Maximillian S." <[mshifrin@bakerlaw.com](mailto:mshifrin@bakerlaw.com)>

Cc: "Sheehan, David J." <[dsheehan@bakerlaw.com](mailto:dsheehan@bakerlaw.com)>, Helen Chaitman <[hchaitman@chaitmanllp.com](mailto:hchaitman@chaitmanllp.com)>

**Subject: Draft Joint Letter to Judge Maas**

Max:

I am attaching our portion of a draft joint letter to Judge Maas regarding the discovery dispute over trading records.

Could you please provide the Trustee's position by Thursday or Friday morning so that we can submit this to Judge Maas on Friday?

Thank you,  
Greg Dexter

Gregory M. Dexter  
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September 17, 2018

### VIA E-MAIL

Helen Davis Chaitman  
Chaitman, LLP  
465 Park Avenue  
New York, New York 10022

*Re: Trust U/Art Fourth O/W/O Israel Wilenitz, et. al., Adv. Pro. No. 10-04995 (SMB)*

Dear Helen:

On September 4, 2018, your colleague, Greg Dexter, sent me your portion of a draft joint letter to Judge Maas pursuant to his March 15, 2017 order governing your request for “trading records.” We subsequently sent you the Trustee’s position on September 10, 2018, and we were under the impression that you would be submitting the joint letter shortly thereafter.

You have yet to do so, however, and have instead sent us a separate letter, dated September 14, 2018, in which you continue to obfuscate and misrepresent the relevant history of this dispute. At this juncture, given the multitude of inaccuracies in this recent letter, it is clear to us that we will need Judge Mass’s assistance if we are to come to any resolution, and we therefore encourage you to submit the joint letter at your earliest convenience. As a reminder, please send us a final version of the letter before submitting it to Judge Maas.

With respect to the saved search functionality of E-Data Room 1, in my recent email to Ms. Cole, I invited her to consult with our Litigation Support Manager and discuss any proposed technical solutions she may have. I also informed her that, as an alternative solution, we were willing to make a conventional production of all the documents in E-Data Room 1 so that you can load them onto your own review platform without any restrictions. The Trustee stands by this offer, so please let us know how you would like to proceed.

Atlanta Chicago Cincinnati Cleveland Columbus Costa Mesa Denver  
Houston Los Angeles New York Orlando Philadelphia Seattle Washington, DC

September 17, 2018  
Page 2

Sincerely,

*/s/ Maximillian S. Shifrin*

Maximillian S. Shifrin  
Associate

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November 27, 2018

**VIA ELECTRONIC MAIL**

Honorable Frank Maas, U.S.M.J. (Ret.)  
c/o JAMS, Inc.  
620 Eighth Avenue, 34th Floor  
New York, New York 10018  
fmaas@jamsadr.com

*Re: Picard v. Wilenitz, et al., Adv. Pro. No. 10-04995*

Dear Judge Maas:

We write in response to Ms. Chaitman's letter, dated November 20, 2018, which we note is an unauthorized supplemental submission. To the extent Your Honor considers that submission, we offer the following rebuttal intended to provide Your Honor with the context necessary to resolve this dispute.

In many ways, Ms. Chaitman's letter speaks for itself. It confirms the Trustee's representations at the arbitration, including how difficult it has been to maintain a productive and professional relationship with Ms. Chaitman. Most vividly, it shows that Ms. Chaitman's interest in documents is ultimately subordinate to her desire to perpetuate a false narrative of impropriety by the Trustee and his counsel. As we stated during the arbitration, the latter objective is, and always has been, her primary one. And it has made it impossible for the Trustee to resolve this longstanding dispute amicably, as evidenced by the significant efforts we detailed in the joint-statement and during the arbitration.

All of this is obvious from the first section of Ms. Chaitman's letter. Under the heading "The Trustee's Deception," Ms. Chaitman offers multiple quotes—over two-years old and devoid of any context—that, upon the slightest inspection, do not support Ms. Chaitman's version of events. This lack of context is why we recently provided Your Honor with complete transcripts of the hearings Ms. Chaitman selectively quotes, as well as examples of our formal disclosures that contradict her narrative.

We encourage Your Honor to review the transcripts and disclosures in their entirety—although it is clear from Ms. Chaitman's own exhibits that her quotes are misleading. For

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Houston Los Angeles New York Orlando Philadelphia Seattle Washington, DC

example, the very first quotation Ms. Chaitman references as proof of the Trustee's purported representations that E-Data Room 1 contained "all the trading records" actually reflects the Trustee's intention to produce any records of BLMIS securities trading retrieved by the search terms he applied after the December 2016 Arbitration. The Trustee has fulfilled this promise by producing *every* document responsive to the search terms (and restored from over 200 microfilm reels) alluded to in that transcript—as well as approximately 250 additional search terms we have applied in the BLMIS Database since then.

Similarly, with respect to the quotes from the May 2016 conference, the Trustee's counsel represented that E-Data Room 1 contains the documents the Trustee's experts reviewed in connection with their reports, and that Ms. Chaitman is not only capable of reviewing those same documents and conducting her own investigation, but that she should have some understanding of everything already available to her before she insisted on additional, expansive discovery. *See* May 2016 Conference Transcript at 10-13; 18-19. That has been our consistent message to Ms. Chaitman for years, and this is precisely what Ms. Chaitman has resisted for years. To this day, Ms. Chaitman has never offered examples of the types of records she is looking for, and her repeated and vague requests for "all the trading records," without any more detail despite the Trustee's multiple voluminous productions, suggest that she has not familiarized herself with the approximately 300,000 documents the Trustee has produced in connection with this dispute—or the four million the Trustee affirmatively made available before this dispute even arose.

Most fundamentally, the Trustee has always been clear about the nature of E-Data Room 1, the BLMIS Database, and the unrestored collection of BLMIS Data in his Rule 26 initial disclosures and discovery responses—both of which were served on Ms. Chaitman *before* the May 2016 conference. *See* Responses and Objections served in *Picard v. Wilenitz*, dated April 8, 2016, attached as Exhibit A, at 3-6<sup>1</sup>; 19; Rule 26 Initial Disclosures served in *Picard v. Wilenitz*, dated December 15, 2015, attached as Exhibit B. These formal disclosures establish that: (i) the Trustee has thousands of boxes of hard-copy documents and thousands of pieces of media; (ii) only "some" (approximately 30 million) of these hard-copy and electronic documents have been processed; and (iii) only four million documents (including third-party documents) have been affirmatively made available in E-Data Room 1 for the purpose of proving that BLMIS was a fraudulent and insolvent enterprise. *See id.* Given the unquantifiable nature of the Trustee's enormous data set, the Trustee's counsel would never represent that every single "trading record" in existence, however defined, is in E-Data Room 1. Indeed, such a position would be inconsistent with the Trustee's efforts over the last two years to produce millions of pages of additional documents.

With respect to the issue of attorney work product, the Trustee's primary objections to a request for 30 million documents, without regard to relevance and proportionality, are that it is (i) inconsistent with Fed. R. Civ. P. 26 and (ii) inconsistent with the specific directives contained in Your Honor's March 2017 Order. Your Honor raised the issue of privileged materials in that data population, and thus we provided Your Honor with an accurate assessment of the

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<sup>1</sup> The data-related numbers in the *Wilenitz* discovery responses are different than those represented during the arbitration primarily due to the recharacterization of some hard-copy documents as ESI.



circumstances. Since the December 2016 Arbitration, we have run approximately 250 search terms across the BLMIS Database and have produced all documents retrieved by those searches, and we recently offered to produce all the scanned hard-copy documents in the BLMIS Database as part of an ultimate resolution to this longstanding dispute (which Ms. Chaitman rejects). It is therefore apparent that we have been willing to make broad productions notwithstanding the potential work product those productions contain. The fact remains, however, that Rule 26 and the March 2017 Order are sufficient objections to a request for 30 million documents, which is why the Trustee has insisted that this population be targeted with reasonable search terms.

Indeed, the Trustee has already targeted the records Ms. Chaitman seeks using the most reasonable search terms that exist: the account numbers for known BLMIS/Madoff bank accounts. Attached as Exhibit C is the list of account numbers the Trustee ran for Ms. Chaitman, with the corresponding financial institution to which the account number belongs. The Trustee provided this chart to Ms. Chaitman months ago. The exhibit contains multiple account numbers from all the financial institutions Ms. Chaitman specifically referenced at the arbitration—including JPMorgan & Chase, Bear Stearns, Lehman Brothers, Morgan Stanley, Fidelity, and Bank of New York. *See* November 19, 2018 Arbitration Transcript, at 41. As we explained at the arbitration, the Trustee ran these search terms in both the Rule 2004 Database and the BLMIS Database, which resulted in two productions totaling over 10,000 documents and nearly 200,000 pages.

Critically, the November 2017 Meet and Confer was the culmination of a months-long back and forth on Ms. Chaitman's original list of 22 search terms based on well-known financial institutions. Rather than run these search terms that returned millions of hits, the Trustee agreed to run the 94 targeted search terms using known BLMIS/Madoff account numbers—despite the fact that Ms. Chaitman was out of compliance with the March 2017 Order. This reasonable compromise was designed to avoid using the 22 broad and unfocused search terms Ms. Chaitman originally offered and also to avoid any further involvement by Your Honor. Now that the Trustee has produced documents responsive to these search terms (from both the Rule 2004<sup>2</sup> and BLMIS Databases), Ms. Chaitman should not be permitted to reverse course on the agreements reached at the November 2017 Meet and Confer and insist on the initial search terms that precipitated it. In fact, before the meet and confer, Ms. Chaitman informed the Trustee that she was not interested in “emails or similar documents” and explored whether there was a way of “separating out the non-trade documents.” *See* Emails exchanged between Ms. Chaitman and David J. Sheehan, attached as Exhibit D. Less than two weeks later, the parties accomplished this by agreeing to use account numbers as search terms in lieu of bank names.

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<sup>2</sup> The Trustee bifurcated the production from the Rule 2004 Database by first producing the documents responsive to Ms. Chaitman's substantive request for third-party “trading records” as well as other non-confidential material retrieved by the search terms. While the Trustee was in the process of noticing the relevant parties regarding the production of confidential materials responsive to the search terms (pursuant to the operative Litigation Protective Order and consistent with his goal of producing all documents the search terms retrieved), Ms. Chaitman wrote a letter to the Court requesting permission to file a motion for sanctions and complained about the non-responsive materials contained in the production the Trustee had already made. Accordingly, the Trustee represented to the Court and Ms. Chaitman that he would not produce the non-responsive confidential documents. The Trustee later produced all documents responsive to the same search terms applied across the BLMIS Database.

Lastly, with respect to the indices, Ms. Chaitman does not accurately describe what the Trustee has provided. On December 16, 2016, in connection with the December 2016 Arbitration, the Trustee produced two indices: a Warehouse Index detailing hard-copy BLMIS documents and a Media Index detailing electronic BLMIS media, which included the microfilm. Months later, after Your Honor denied Ms. Chaitman's second motion to compel and Ms. Chaitman improperly raised the Trustee's collection of microfilm with Judge Bernstein, the Trustee produced a third index—the Microfilm Index—which was intended to provide additional information about BLMIS microfilm specifically. Ms. Chaitman's conflation of these various indices, produced at different points in time and for different reasons, as well as her reintroduction of the microfilm issue already resolved by Judge Bernstein, is just another example of how difficult it has been for the Trustee to navigate this dispute toward ultimate resolution. And Ms. Chaitman's last-minute efforts to discredit the Warehouse Index she has never used—nearly two years after the Trustee produced it and one and a half years after Your Honor directed her to consult it—should be rejected outright.

Ms. Chaitman's intransigence in the face of multiple reasonable proposals by the Trustee is self-evident, and thus we respectfully request that Your Honor (i) deny Ms. Chaitman's request as inconsistent with Fed. R. Civ. P. 26 and the March 2017 Order; and (ii) recognize that the Trustee has complied with all relevant orders and that Ms. Chaitman's accusations are meritless. Granting Ms. Chaitman's instant request would require ignoring the rules governing discovery, the orders governing this dispute, and the millions of pages of documents the Trustee has produced in a good faith effort to resolve it. And as an unfortunate collateral consequence, it would effectively reward Ms. Chaitman's inappropriate conduct over the past two years.

Respectfully submitted,

*/s/ Maximillian S. Shifrin*

Maximillian S. Shifrin

cc: Helen Davis Chaitman (via email)